United States Court of Appeals

for the Second Circuit

APPENDIX

75-7214

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

- X

GRACE TOWERS TENANTS' ASSOCIATION, ET AL.,

Plaintiffs-Appellants,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., et al.,

Defendants-Appellees.

CIVIL APPEAL
DOCKET NO.
75-7214

- X

APPENDIX TO THE BRIEF

BOLS

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PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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THOMAS N. ROTHSCHILD
Attorney for Plaintiffs
East New York Legal Services
Brooklyn Legal Services
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503 Pennsylvania Avenue
Brooklyn, New York 11207
(212) 385-4-45

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- ----------X

GRACE TOWERS TENANTS ASS'N, et al.,

Plaintiff-Appellants,

74 Civ. 1714

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendant-Appellees.

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D. 74C 1714 DOCKET

APPEAL

BRUCHHAUSEN, J.

TITLE OF CASE

GRACE TOWERS TENANTS ASS'N. an unincorporation association; and BENNIE MASON, individually and as President of Grace Towers Tenants Association and ELIZABETH BOONE, individually and as Secretary of Grace Towers Association, and on behalf of all others similarly situated,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC.; JACOB UNDERWOOD, individually and as President of GRACE HDFC CO., INC.; MARIA EVANS, individually and as Managing Agent of GRACE HDFC, Inc.; and JAMES T. LYNN, as Secretary of the United States Department of Housing and Urban Development,

ATTORNEYS

For Plaintiff:

THOMAS N. ROTHSCHILD
503 Pennsylvania Ave
Bklyn, N.Y. 11207
385-4043

For Defendant:

DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
6/74	COMPLAINT $15.00		
2-9-74	Paid to Treas.		15 —
3-20-75	Notice of Appeal	5 —	
3-21-75	Paid to Treas.		5

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC.

EXHIBITS IN SUPPORT OF THE COMPLAINT

Ex. 1.	Regulatory Agreement between Grace HDFC and the City of New York dated 12-9-70.	214
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Ex. 3.	Regulatory Agreement between the U.S. Dept. of Housing and Urban Development (HUD) and Grace HDFC dated 12-14-70.	267
Ex. 4.	Certificate of Incorporation of Grace Housing Development Fund Co., Inc., filed by the Secretary of State, State of New York on 11-18-68.	277
Ex. 5.	Exchange of Correspondence between Plaintiff-Appellants' representatives and U.S. Dept. of Housing and Urban Development dated respectively 9-12-74 and 9-19-74.	284
Ex. 6.	Rent Supplement Agreement between Grace HDFC and HUD dated 12-14-70, and all materials supplied by Grace HDFC to HUD in support of its request for a rent increase.	288
Ex. 7.	Affidavit of Stanley G. Berger, Esq., C.P.A., finding Grace HDFC material insufficient to support HUD's approval of a rent increase dated 10-11-74.	327

E4C 1714

GRACE TOWERS, ET ANO VS. GRACE HOUSING DEV., ET AL

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
12/6/74	Complaint filed. Summons issued.	1	JS5
12/18/74	Before BRUCHHAUSEN,J.- Case called- Adjd to 1/9/74 for trial		
12/18/74	Affidavit of T. Rothschild filed.	2	
12/18/74	Pltff's Memorandum of Law filed.	3	
12/18/74	Deft's Memorandum of Law filed.	4	
12/18/74A	Affidavit of Sheldon Ostro filed.	5	
1-8-75	Federal deft's memorandum of law filed.	6	
1-15=75	By BRUCHHUASEN, J.-Memorandum and Order dtd 1-15-75 dismissing the action on the merits filed. (p/c)	7	
1-15-75	JUDGMENT dtd 1-16-75 denying motion for preliminary injunction and dismissing the complaints on the merits filed. (p/c)	8	
1/30/75	NOTICE OF APPEAL FILED. Duplicate of Notice of Appeal and docket sheet mailed to the C. of A.	9	
2-6-75	Motion for leave to appeal in forma pauperis, etc. filed.	10	
2-6-75	By BRUCHHAUSEN, J. - Order dtd 2-6-75 granting leave to prosecute appeal in forma pauperis, etc. filed.	11	
2-10-75	By BRUCHHAUSEN, J.-Order to Show Cause dtd 12-6-74 ret 12-18-74 re Rule 23, directing that the action be prosecuted as a class action, etc filed. (See Order)	12	
2-10-75	Summons returned and filed/ executed.	13	
2-27-75	Affidavit of service of order granting leave to appeal in forma pauperis filed.	14	
2-27-75	Stenographer's transcript dtd 12-18-74 filed.	15	
3-25-75	Notice of pendency of action filed.	16	
3-25-75	The above record on appeal was certified and handed to Igou Allbray for delivery to the Court of Appeals.	---	
3-28-75	Acknowledgment recieved from C of A for receipt of record on appeal filed.	17	
3-28-75	By BRUCHHAUSEN, J.- Duplicate original order granting leave to prosecute appeal in forma pauperis, etc. filed.	18	

3-28-75	Supplemental record on appeal certified and handed to Igou Allbray for delivery to the Court of Appeals.		
[illegible]-75	Acknowledgement rec'd from C of A for receipt of supplemental record on appeal & filed.	19	
4-23-75	Stenographer's transcript dtd 1-9-75 filed, and Clerk's Cert.	20/21	
4-25-75	Supplemental record certified and handed to Igou Allbray for delivery to C of A.		

A TRUE COPY
ATTEST
DATED 4-25 1975
LEWIS ORGEL
CLERK
BY Marilyn Glenn
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N. an unincorporation association; and BENNIE MASON, individually and as President of Grace Towers Tenants Association and ELIZABETH BOONE, individually and as Secretary of Grace Towers Association, and on behalf of all others similarly situated,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC.; JACOB UNDERWOOD, individually and as President of GRACE HDFC CO., INC.; MARIA EVANS, individually and as Managing Agent of GRACE HDFC, Inc.; and JAMES T. LYNN, as Secretary of the United States Department of Housing and Urban Development,

Defendants.

----------X

COMPLAINT
CLASS ACTION

74 Civ.

74C 1714

A. PRELIMINARY STATEMENT

1. This is a class action brought by and on behalf of tenants and their tenant association in a subsidized housing project owned and operated by the first defendants. The plaintiffs challenge a rent increase intended to go into effect October 1, 1974, on the grounds that first, the procedures used by H.U.D. in granting required approval for the increase denied plaintiffs a constitutional and statutory right to be heard; second, that the increase was not justified by the material submitted by the first defendants to H.U.D. and third, that H.U.D. should have denied the increase due to a lack of required services and irregularities of operation of the project.

Grace Towers consists of two apartment buildings, of 84 units each, at 272 Pennsylvania and 2060 Pitkin Avenue, Brooklyn, New York, and adjacent and presently unrented commercial space on Pitkin Avenue, all owned by defendant Grace Housing Development Fund Co., Inc. (Grace HDFC). Grace HDFC is a non-profit housing corporation whose sole corporate purpose is to provide housing to low income families living in Grace Towers. Grace HDFC is presently federally subsidized with a 3% 40-year motgage under §221(d)(3) of the National Housing Act, 12 U.S.C. §1715 l (a), and receives rent supplementation on behalf of 10% of the tenants, pursuant to 12 U.S.C. §1701 (s). The project was build with extensive financial aid from federal, state and local sources, and is subject, as a result of its manner of incorporation in New York State, and agreement with all three levels of government, to their pervasive regulation and supervision, including extensive regulation of rent levels.* Defendant Underwood is the Chairman of the Board and President of Grace HDFC, and Defendant Evans its Managing Agent.

On or about August 27, 1974, without previous consultation with the tenants or notice to them, defendants informed plaintiffs that the United States Federal Housing

* See Exhibits 1,2,3 & 4 to Complaint.

Administration (FHA) had approved a 23% rent increase to be effective October 1, 1974.

Thereafter, legal counsel for the Association approached the Loan Management Section of FHA, requested all material submitted by the owner to FHA in application for the increase, requested an opportunity for the tenants and their legal and accounting consultants to submit and have considered by FHA material in opposition to the increase and to have a written determination by FHA on the increase with supporting reasons.*

In response to this request, George Brown, Acting Loan Management Director (FHA), had a meeting with a delegation from the Association at which he promised to supply all materials submitted by the owner to HUD in support of its application for an increase. Brown rejected the other requests. (See exchange of correspondence attached to complaint as Exhibit 5.)

The owner application material was received from Mr. Brown's office and submitted to the Association's accountants for examination, analysis and an opinion as to whether this information supported a 23% increase.

The accounting firm, Hoffberg, Oberfest & Berger, CPA's, 888 Seventh Avenue, New York, New York, found that the

*FHA is a subsidiary agency of the United States Department of Housing and Urban Development(HUD). Defendant Lynn, as Secretary of HUD, bears the ultimate legal responsibility for their actions.

B. JURISDICTION

2. Jurisdiction is involved under 28 U.S.C. §§1343, 1331, 1337 and 1361, there being rights at issue valued at more than $10,000.00 exclusive of costs and interest. See also 5 U.S.C. 702.

C. PARTIES

3. GRACE TOWERS TENANTS ASSOCIATION (hereinafter Association) is an unincorporated association, composed of tenants of Grace Towers, a project made of two adjacent residential buildings located at 272 Pennsylvania Avenue and 2060 Pitkin Avenue, Brooklyn, New York, and a third commercial building. It sues on behalf of itself and its members.

4. BENNIE MASON is a tenant of Grace Towers residing at 2060 Pitkin Avenue, and is the President of the Association.

5. ELIZABETH BOONE is a tenant of Grace Towers residing at 2060 Pitkin Avenue, and is Secretary of the Association.

6. GRACE HOUSING DEVELOPMENT FUND CO., INC. (hereinafter Grace HDFC) owns and operates Grace Towers. On information and belief, it is a New York Corporation, organized pursuant to the New York Not-For-Profit Corporation Law (McKinney's Vol. 37) and Article 11 of the New York Private Housing Finance Law (McKinney's Vol. 41).

7. JACOB UNDERWOOD is the Chairman of the Board and President of Grace HDFC, and is also the pastor of Grace Baptist Church, located at 233 New Jersey Avenue, Brooklyn, New York.

He resides at 223 New Jersey Avenue, Brooklyn, New York. He is sued individually and as an officer of Grace HDFC.

8. MARIA EVANS, on information and belief, is employed by Grace HDFC as its Managing agent for Grace Towers. She is sued individually and as Managing Agent.

9. JAMES LYNN is the Secretary of the United States Department of Housing and Urban Development (H.U.D.). He is sued in his official capacity.

D. NATURE OF GRACE HDFC

10. Grace HDFC is organized for the purpose of providing low-cost housing for persons of lower income in New York City. Its vehicle for achieving this goal is Grace Towers, a complex of three buildings, two of which are residential containing 168 apartments, while the third contains 1,000 square feet of unrented commercial space.

11. The certificate of incorporation of Grace HDFC as a Membership corporation required the approval of a Justice of the Supreme Court of the State of New York, and of the State Commissioner of Housing and Community Renewal, and such approvals would also be required for any amendment thereto. A copy of the certificate is annexed as Exhibit 4.

12. In order to ensure that Grace HDFC would fulfill the state's purpose of providing low and moderate income housing Grace HDFC was required, prior to receiving title to the property, to enter into an agreement with HDA, a certified copy of which is annexed as Exhibit 1, whereby Grace HDFC agreed to certain regulations by the City of New York and the City agreed to provide certain subsidies to Grace HDFC. Included in the agreement is the following, among other things:

a) The property is in the Central Brooklyn Community Development Plan Area, a duly designated Urban Renewal Area, and constitutes Model Cities Vest Pocket Houses Site 32 (5th and 6th "Whereas" Fact Sheet).

b) The entire parcel, consisting of 21 lots, is acquired by the City and cleared and the tenants relocated by the City, and is to be sold to Grace HDFC for $84,000 (7th, 11th and 12th "Whereas"; paragraphs 101 - 103(A) inclusive).

c) All construction plans are subject to approval by HDA, and the property may not be transferred without approval of HDA (8th "Whereas"; paragraphs 201, 202, 203(a) (last paragraph) 205(c), 403 - 408 inclusive, and 503).

d) HDA must approve the by-laws of Grace HDFC and must be notified of all changes in the composition of the Board of Directors or in management (paragraph 403).

e) A plan is established to work towards a goal of conversion of the property to cooperative ownership, which Grace HDFC shall do if HDA so determines (Article III, Addendum).

f) HDA sets up certain requirements for tenants and certain priorities for tenant selection which Grace HDFC is obligated to follow, including the right to review all applications by commercial tenants (paragraph 409(a) (b) and (c) and 500).

g) An income limit is established by HDA, in addition to the limits established by FHA, and tenants exceeding this are required to pay a surcharge, according to a schedule, to be remitted by Grace HDFC directly to the City (paragraph 409(c)).

h) Grace HDFC agrees that any construction contract shall contain an affirmative plan for hiring minority workers, and agrees not to discriminate in any way in employment or renting (paragraphs 301-305 inclusive; 500, 504 (b) and (c); 505(c)(1)).

i) If Grace HDFC fails to construct the project in accordance with the agreement, Grace HDFC agrees to return title to the property to the City at its request, but the City shall nevertheless restrict use of the property in accordance with the Agreement (paragraph 502).

j) An exemption from real estate taxes is given, with certain exceptions, for a period of 40 years (paragraph 402).

k) The entire agreement is a statement of public purpose and the public is an intended beneficiary (paragraphs 505(B) and (C)(3)).

13. Said Agreement is expressly incorporated as a term of the deed granting title to Grace HDFC (P.3 paragraph 2), and much of the substance thereof is repeated in the deed and the Resolution of the Board of Estimate annexed thereto (Cal. No. 11 of August 20, 1970), including the public purpose and nature of the undertaking. (See Resolution, paragraph 5.) A certified copy of the deed and resolution is annexed as Exhibit 2.

14. Pursuant to this agreement HDA regulates or monitors aspects of its operation of Grace Towers, including inter alia the incomes of tenants and the methods and priorities for selecting tenants.

15. The City of New York gives Grace Towers an abatement of real estate taxes over the entire life of the mortgage.

16. On information and belief, Grace HDFC has been the recipient of additional subsidies from the City, including land acquisition and clearance, through use of the condemnation power and "writedown", and various planning costs, through the Model Cities Administration and HDA.

17. All of the foregoing constitutes action of the state in order to achieve the state's purpose of providing low-cost housing for lower-income persons, whereby the action of Grace HDFC constitute "state action" within the meaning of the 14th Amendment to the Constitution of the United States.

18. In addition, Grace HDFC receives a subsidy of its mortgage on Grace Towers from the Federal Housing Administration (FHA) pursuant to Section 221 (d)(3) of the National Housing Act, whereby the life of the mortgage is 40 years, and the rate of interest paid by Grace HDFC is 3%, the difference between that rate and the market rate being paid to the mortgagee by FHA. FHA is a constituent agency of HUD, and Defendant Lynn is ultimately responsible for its acts.

19. In return for the foregoing, Grace HDFC is required to and did enter into a regulatory agreement with the Secretary of HUD, acting through the Commissioner of FHA, pursuant to which, inter alia, FHA must approve the form of

lease used by Grace HDFC and any schedule of rents before the same may legally be put into effect in Grace Towers. Grace HDFC is also required to certify to FHA the services provided to tenants, and is required to maintain such services in order to obtain approval of any increase. A certified copy of the regulatory agreement is annexed as Exhibit 3.

20. FHA also pays to Grace HDFC, pursuant to other sections of the National Housing Act, a rent supplement for certain tenants, upon application for the same by Grace HDFC.

E. CLASS ACTION ALLEGATIONS

21. Named plaintiffs bring this action pursuant to Rules 23(a) and 23(b)(1)(B) and (b)(2), F.R.C.P., on behalf of themselves and all others similarly situated, namely, all residential tenants of Grace Towers subject to a rent increase on October 1, 1974.

22. The class, upon information and belief, consists of approximately 167 families, and is so numerous as to make it impracticable for each member to appear individually herein. There are pertinent questions of law and fact common to the entire class.

23. The claims of named plaintiffs are typical of the claim of the class, and determination of their claims would be dispositive of the interests of the other members not parties to the litigation. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class.

F. FACTS

24. Grace HDFC owns and operates Grace Towers, a two-building subsidized development wherein plaintiffs reside. On or about May , 1974, Grace HDFC requested permission of the Federal Housing Administration (FHA), an agency of HUD, to raise the rents at Grace Towers. Such permission is required by the terms of a Regulatory Agreement between Grace Towers and FHA.

25. On or about August , 1974, FHA approved the application for an increase, to be effective October 1, 1974.

26. At no time were the tenants notified of the application or given an opportunity to comment thereon. The first notification was a letter to each tenant, on or about August 27, 1974, telling the tenant that an increase was already approved to take effect October 1, 1974, and the amount of his or her individual increase.

27. Thereafter legal counsel for the Association approached the Loan Management Section of FHA, requested all material submitted by the owner to FHA in application for the increase, requested an opportunity for the tenants and their legal and accounting consultants to submit and have considered by FHA material in opposition to the increase and to have a written determination by FHA on the increase with supporting reasons.

28. In response to this request, George Brown, Acting Loan Management Director, had a meeting with a delegation

from the Association on September 20, 1974, at which he promised to supply all materials submitted by the owner to HUD in support of its application for an increase. Brown rejected the other requests. Exchange of correspondence is annexed as Exhibit 5.

29. Certain owner application material was received from Mr. Brown's office on September 23, 1974 and submitted to the Association's accountants for examination, analysis and an opinion as to whether this information supported a 23% increase. A copy is annexed as Exhibit 6.

30. The accounting firm, Hoffberg, Oberfest & Burger, (Plaintiffs' accountants), 888 Seventh Avenue, New York City, found that the material was insufficient for it to render an opinion as to the validity of the basis for the increase. (See affidavit of Stanley Berger annexed as Exhibit 7.)

31 FHA refused a request by the Tenants' Association to delay the effective date of the increase to receive and consider , prior to permitting it to become effective, tenant material in opposition to the increase, and to revise the Department's position with respect to the increase if warranted by tenants' material.

FIRST CAUSE OF ACTION

32. The failure of the FHA to notify the plaintiffs of the application for an increase, and to give them an opportunity to examine it and the written response thereto, prior to approval, denied plaintiffs the due process of law.

SECOND CAUSE OF ACTION

33. The application for increase failed to comply with FHA regulations, and its approval was therefore contrary to the National Housing Act 42 U.S.C. §1401 et seq (the Act) and regulations established thereunder.

THIRD CAUSE OF ACTION

34. The application failed to allege facts sufficient to warrant an increase and omitted other facts required to establish the need for same, for which reason the approval by FHA was arbitrary and capricious and constituted a deprivation of plaintiffs' property without due process of law, and was contrary to the Act and Regulations.

FOURTH CAUSE OF ACTION

35. On information and belief, Grace HDFC failed to report in its application to FHA certain income received by it from Grace Towers, for which reason the application was incomplete and its approval by FHA was contrary to the Act and Regulations, and was in violation of a regulatory agreement.

FIFTH CAUSE OF ACTION

36. The plaintiffs are not receiving services required to be provided prior to approval of any increase, for which reason the increase is contrary to the Act.

SIXTH CAUSE OF ACTION

37. Defendants Grace HDFC, Underwood and Evans did not submit and Defendant HUD did not approve the standard lease in use at Grace Towers, for which reason the increase is contrary to the Act and Regulations.

NO REMEDY AT LAW

38. In all of the foregoing causes of action, plaintiffs are without an adequate remedy at law, for which reason injunctive and declaratory relief is sought herein.

WHEREFORE, plaintiffs pray that this Court:

1. Enter an order determining that this action may properly proceed as a class action pursuant to Rules 23(a), 23(b)(1)(B) and (b)(2);

2. Enter a declaratory judgment that defendants' increases or approval of increases of plaintiffs' rents, and summary proceedings in state court for non-payment of rent based on such increases, violate the Constitutuion and Laws of the United States, and Executive Orders and regulations duly promulgated thereunder, in that defendants have failed to provide plaintiffs with written notice that a rent increase was being sought and failed to provide for opportunity to review all materials supporting the request for the increases, and to submit material in opposition thereto and a decision based upon such material; and mandate defendant Lynn to withdraw approval granted in August, 1974 of the rent increase to take effect October 1, 1974 upon the same grounds and on further grounds that the material submitted did not warrant an increase, and that there is further information, which defendants Grace HDFC, Underwood and Evans should have but failed to submit which shows that the increase was not warranted, and that there are irregularities of operation and lack of services which must be corrected prior to approval of any increase.

3. Preliminary and permanently enjoin defendants from increasing plaintiffs' rents or commencing or prosecuting summary proceedings in state court for non-payment of rent, based on such increases upon the foregoing grounds, without providing plaintiffs, prior to approval of the increase, with notice that an increase is being sought, and opportunity to review all materials supporting the request for increase and to submit material in opposition thereto, and making a decision based thereon, upon the grounds that failure to provide such rights violates the Constitution and Laws of the United States and Executive Orders and regulations duly promulgated thereunder.

4. Direct defendants to pay plaintiffs' costs, disbursements and counsel fees herein, and granting such other and further relief as the Court may deem just, proper and equitable.

DATED: Brooklyn, New York

December 5, 1974

THOMAS N. ROTHSCHILD
BROOKLYN LEGAL SERVICES CORP. A
503 Pennsylvania Avenue
Brooklyn, New York 11207
Tel: 385-4045
Attorney for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

ELIZABETH BOONE, being duly sworn, deposes and says:

That deponent is Secretary of plaintiff Grace Towers Tenants Association and one of the named plaintiffs in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Elizabeth Boone
ELIZABETH BOONE

Sworn to before me
this 3rd. day of December, 1974

Innocencia Quiñones
Notary Public

INOCENCIA QUIÑONES
Notary Public, State of New York
No. 24-4564973
Qualified in Kings County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

GRACE TOWERS TENANTS ASS'N, etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.
----------X

AFFIDAVIT

STATE OF NEW YORK)
)SS.:
COUNTY OF KINGS)

THOMAS H. ROTHSCHILD, being duly sworn deposes and says:

1. I am the attorney for Plaintiffs herein and make this affidavit in reply to the affidavit of SHELDON OSTRO as regards the question ofadequacy of representation of the proposed class by our office.

2. Brooklyn Legal Services Corporation A, by which I am employed, is incorporated for the purpose of rendering free legal assistance to poor persons. In doing so, however, it is not required that every individual or member of a group represented by it be poor. When an attorney-client relationship is established, as here, it would not be proper for the court to inquire into the terms, any more than the court could question the ability to pay of a person who has retained private counsel. Any other conclusion would lead to intolerable interference in our relationships with our clients, and put this court in the position of supervising our client representation and operation, which is not the role of this court.

3. As a member of the Bar of this Court, I am certainly entitled to represent all members of the class in this case.

4. Brooklyn Legal Services Corporation A furthermore, is affirmatively required to represent groups, organizations and classes of persons, some of whose members may be beyond our individual representation criteria, in appropriate circumstances. The standards for this representation are contained in the attached exhibit. The exhibit is a condition to the grant of federal monies which presently constitute our sole operating funds, which condition actually requires us to engage in representation such as will be required in the instant case. Accordingly, Defendant's objections are without substance.

5. In any event, any tenant who wishes to do so may withdraw from the class, or may appear by his own attorney, thereby protecting whatever personal considerations he or she may have.

WHEREFORE, deponent requests that plaintiffs be permitted to prosecute the within action as a class action.

s/

THOMAS N. ROTHSCHILD

Sworn to before me this
18th day of December, 1974

s/

NOTARY PUBLIC

RICHARD SALTZMAN
Notary Public, State of New York
No. 24-0745345
Qualified in Kings County
Commission expires March 30, 1976

SPECIAL CONDITION

1. NAME OF GRANTEE: CDA

2. GRANT NO. 1064 - F / 4 (PROGRAM YR. / ACTION NO.)

3. SPECIAL CONDITION APPLIES TO:

a. [X] ALL PROGRAM ACCOUNTS IN GRANT ACTION b. [ ] ONLY PROGRAM ACCOUNT NUMBER(S)

This grant is subject to the Special Condition below, in addition to the applicable General Conditions governing grants under Title II or III-B of the Economic Opportunity Act of 1964 as amended.

SPECIAL CONDITIONS APPLICABLE TO CALS AND ALL DELEGATE AND AFFILIATED CORPORATIONS

* * * * *

ELIGIBILITY STANDARDS FOR GROUP REPRESENTATION

The basic objective of Legal Services programs is effective representation of the legal interests of the poor, through advice, planning, negotiation, advocacy, litigation and such other methods as are used by attorneys in private practice on behalf of individuals, groups and entities.

Unlike private attorneys, however, Legal Services lawyers must operate within the context of furthering "the cause of justice among persons living in poverty", under Section 222(2)(3) of the Economic Opportunity Act of 1964, as amended. With the growing tendency in many impoverished communities to severally present crucial issues and to rely on group efforts in the area of economic development, a rational basis for deciding whether representation can be undertaken must be considered. The following guidelines are to be utilized in deciding whether groups and entities financially qualify for representation by Legal Services attorneys:

1. Group clients with cases which by nature could actually generate a fee, as tested by two referrals to the private bar, are ineligible. Similarly, group clients who are able to pay a member of the private bar are ineligible. However, a group is sometimes unable to retain counsel for reasons unrelated to its ability to pay a fee. Where this is the case, and can be documented, representation in issues significantly related to improving the lot of the poor should be afforded as an exception to the financial eligibility rules.

2. Non-profit unincorporated groups or associations are eligible if

a. the group as an entity does not have ready assets available to pay for private representation, and

b. a majority of the active membership are stated to or would appear to qualify as individuals.

In borderline cases, due consideration shall be given to whether the purpose or goals of the group or assertion of the particular legal principle at issue bears substantial significance to the achievement of justice for poor people generally or for a significant number of poor people.

3. Non-profit corporations or cooperatives are eligible without reference to the economic status of its members if

a. the corporation or cooperative does not have sufficient ability to borrow ready assets or expected income available to pay for private representation and

b. poor people predominate as members of the corporation or cooperative and its primary goal is to alleviate significant poverty problems, or

c. assertion of the particular legal principle at issue bears substantial significance to the achievement of justice for poor people generally.

4. A profit-making entity shall be eligible if

a. it does not have the assets, expected earnings, or borrowing ability to hire a private attorney, as shown by the refusals of two private attorneys to take the case; and

b. the owners of the entity as a group do not have and cannot obtain the financial resources to hire a private attorney.

In assessing whether to represent profit-making entities, the social desirability or lack thereof shall be irrevelant.

No derivative suits for damages will be handled by any Legal Services office.

5. Should the economic circumstances of any group or corporation change sufficiently to disqualify the client if an application were then being made, three attempts to refer the matter to the private bar shall be made. If such attempts are unsuccessful, but the primary purpose of the group or corporation is the alleviation of substantial problems of the poor, a Legal Services attorney may continue to represent, advise and counsel said entity on matters which arose during the period when the client could qualify for representation, but shall not undertake new matters. The following qualifications shall apply to changes in economic status:

a. The change in status must be more than merely transitory.

b. Where litigation has been filed, a presumption will lie that a change of attorney would jeopardize the client's position in the matter. The case will be completed by the program at the court level in which it is in process until it is reasonably certain to the director that a change of attorneys will not prejudice the client.

c. Where the legal service in process consists of advice, planning, or other house-counsel types of work, the client must be referred to the private bar as expeditiously as possible when the client becomes ineligible.

6. The interpretation of these rules and the judgements required shall be made by the staff attorney who would represent the client. Where there is doubt, the advice of the supervising attorney or program director should be sought, but a decision must be made promptly.

7. When engaged on counsel for groups, Legal Services attorneys should not be both client and attorney. That is to say, if they engage actively in the affairs of an organization, they should not undertake to represent it or give it legal advice to any extent. Conversely, if an attorney undertakes to represent an organization in any capacity, he should avoid active participation in the organization and its decision-making process.

Public statements pertaining to the general activities or the organization should be made by the leadership of the organization. Statements by legal counsel should be limited to legal problems.

Attorneys should not join demonstrations if they are acting as counsel for the group or entity involved but may monitor the demonstration, advise the clients as to their legal rights and duties, and deal with public authorities at the request of the leadership of the organization.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

GRACE TOWERS TENANTS' ASSOCIATION,
et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO.,
et al.,

Defendants.
----------X

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PLAINTIFFS' MEMORANDUM OF LAW

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GRACE TOWERS TENANTS ASSOCIATION, et al.,

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MEMORANDUM OF LAW

THOMAS N. ROTHSCHILD
EAST NEW YORK LEGAL SERVICES
503 Pennsylvania Avenue
Brooklyn, New York 11207

ON THE BRIEF
THOMAS N. ROTHSCHILD
IGOU M. ALLBRAY, Law Clerk

PRELIMINARY STATEMENT

This is a class action brought by and on behalf of tenants and their tenant association in a subsidized housing project owned and operated by the first defendants. The plaintiffs challenge a rent increase intended to go into effect October 1, 1974, on the grounds that first, the procedures used by FHA, the agent of the Secretary for this purpose, in granting required approval for the increase denied plaintiffs a constitutional and statutory right to be heard; second, that the increase was not justified by the material submitted by the first defendants to FHA and third, that FHA should have denied the increase based on a lack of required services, irregularities of operation of the project, and additional information which defendants failed to supply to FHA.

STATEMENT OF THE CASE

The plaintiffs in this action are the Grace Towers Tenants Association, an unincorporated association composed of tenants of Grace Towers, and Bennie Mason and Elizabeth Boone, who are tenants of Grace Towers and respectively the President and Secretary of the Association. The purpose of the Association is to provide a vehicle for dealing with tenants' common concerns and interests with respect to the performance of duties and exercise of rights by the owner and by the tenants.

material was insufficient for it to render an opinion as to the validity of the basis for the increase. (See affidavit of Stanley Burger annexed to the complaint as Exhibit 7.)

HUD, acting through George Brown of the FHA Loan Management Department, refused a request by the tenants association to delay the effective date of the increase to receive and to consider, prior to permitting it to become effective, tenant materia in opposition to the increase, and revise the Department's position with respect to the increase if warranted by tenants' material.

This action was then commenced by plaintiffs.

POINT I
THIS COURT HAS JURISDICTION
TO SECURE PLAINTIFFS' RIGHTS
TO DUE PROCESS OF LAW.

Jurisdiction of the court is invoked primarily under 28 U.S.C. §§1343 and 1361, and also under the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202. The Court has jurisdiction over Grace "DFC, Underwood and Evans under §1343, which confers jurisdiction in actions for relief against violations of 42 U.S.C. §1983, regarding acts which deprive plaintiffs of constitutionally protected rights. This reaches any situation where the defendant's acts may be characterized as "state action." Jurisdiction over the Secretary of H.U.D. is based on 28 U.S.C.§1361, which allows

an action to compel a federal officer to perform a duty. In addition jurisdiction is invoked under 5 U.S.C. §§701 and 702 in that plaintiffs, as persons adversely affected by HUD action pursuant to 12 U.S.C. §1715 l(d)(3) are entitled to judicial review.

A. The Acts of Defendants Grace HDFC, Underwood and Evans in Increasing Plaintiffs Rents Constitute State Action.

The Grace HDFC housing project was built in the Central Brooklyn Community Plan Area, a federally aided urban renewal area in Brooklyn, New York. Large contributions were made by the federal government and the City to the project before construction began. Federal urban renewal funds were used to underwrite the cost of land acquisition. The land for the project was acquired by the City through its power of eminent domain. The City was intimately involved from the very beginning in the site clearance, construction and operation of the project, pursuant to the agreement made on August 20, 1970 and recorded with the deed. Every aspect of the construction was covered by the agreement, including detailed plans and construction schedule. The aforesaid agreement made pursuant to law provides for extensive supervision by New York City's Housing Development Administration (HDA) of the organization, planning, development, maintenance and operation of defendant.

Pursuant to the regulatory agreement between HUD and the other defendants, defendants are also subject to extensive limitations on rental agreements (as to amount of rent, increases, income levels), admissions priorities, and title transfer. See deed, Article V.

Grace HDFC is [illegible]rized pursuant to Article 11 of the New York Private Housing Finance Law as a non-profit corporation. The corporate purpose is specific, the certificate of incorporation providing that the company was "organized exclusively to develop on a non-profit basis, a housing project for persons of low income." (Certificate, Par. II.)

Defendants Underwood and Evans are, respectively, the president and managing agent of Grace HDFC, who were responsible for preparing the application for increase and transmitting it to FHA.

Where there exists this kind of "web of state involvement spun by the state", Male v. Crossroads Associate, Inc., 469 F2d 616, 622 (2d Cir., 1972), the acts of the housing company constitute state action, over which the federal courts have jurisdiction to ensure that the tenants are provided with due process of law.

In Burr v. New Rochelle Municipal Housing Authority, 479 F2d. 1165 (2d Cir. 1973), the Circuit Court held that the acts of a public housing authority in seeking rent

increases, constituted state action vesting jurisdiction in the court. The court went on to hold that due process required provision for procedures similar to those sought in this case. In its most recent consideration of rights of tenants in subsidized housing, Lopez v. Henry Phipps Plaza South, Inc., 498 F2d 937 (2d Cir. 1974), the Court held that a private housing project that had been originated by city officials as a federally subsidized urban renewal project and that was continuously involved and "governed by a phalanx of state and federal regulation," was "subject to the same due process requirements with respect to eviction that apply to a municipal housing authority", id. at 942.

"We leave open," the Court continues, "what if anything, due process requires with respect to rent increases in a project like this." Ibid. (Emphasis supplied)

Nonetheless, the Lopez Court expressly states that where federal assistance is conditioned upon state action or where project supervision is vested in a state or municipal agency, state action is created. Ibid., note 2.

All of these cases, considered together, establish the criteria in this Circuit for determining when a subsidized housing development is acting under color of state law. These criteria include the amount of state and local governmental involvement in the planning, construction, rental and

ongoing regulation of the project. Extensive state involvement results in state action, while mere acceptance of federal subsidies does not.

Thus, where government involvement in the financing and operation of a housing development is pervasive, as has been shown in the instant case, its acts are under color of state law and within the jurisdiction of this Court.

B. Plaintiffs are Entitled to Judicial Review Pursuant to 5 U.S.C. §§701, 702 (Administrative Procedure Act).

This Court has jurisdiction to hear plaintiffs as parties aggrieved by the Secretary's failure to grant them procedural and substantive due process with respect to the rent increase in this project approved by him, and as persons aggrieved by the decision itself.

The plaintiffs, as tenants of this project, are the intended beneficiaries of the statutory scheme, and their interests are within the zone of interests protected by §221(d)(3) of the National Housing Act, 12 U.S.C. §1715 l (d)(3), as is discussed more fully in Point III-B infra.

For this reason, they are entitled to judicial review of the Secretary's determination in accordance with the Administrative Procedure Act, 5 U.S.C. §§701,702. Marshall v. Lynn, 497 F.2d 643, 645 (D.C. Cir. 1973), Thompson v. Washington, 497 F.2d 626, 632 (D.C. Cir. 1973), Ass'n of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970); Cf. 24 C.F.R. §410 as amended.

C. This Court has Jurisdiction to Compel Defendant Lynn to Perform a Constituional and Statutory Duty.

In the instant case, defendants sought and received an approval of a rent increase from defendant Lynn, acting through the Federal Housing Administration (FHA), a component part of the United States Department of Housing and Urban Development (HUD). This approval constitutes governmental action subject to due process. See Marshall v. Lynn, supra, 497 F.2d. 643, 647 n.12, sharply rejecting the analysis in Langevin v. Chenango Court, Inc., 447 F.2d 296, 301 (2d Cir. 1971) of the non-governmental action nature of HUD's approval of the increase. According to Marshall, government regulation is government action. See also Langevin , supra, at 304 (Oakes, Cir. J., dissenting). The majority's distinction, critical to its holding, that HUD merely allowed the increase but did not make it is "a distinction without a difference," that could not properly negate the government's ultimate responsibility for the effectuation of the increase.

It follows that plaintiffs' claim to an opportunity to be heard by HUD with respect to the increase is "an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty" owed to a party aggrieved by its acts or non-acts. 28 U.S.C. §1361. The court therefore has jurisdiction to proceed in this case, as conferred by that statute.

See Langevin, supra at 300 and Hahn v. Gottlieb, 430 F.2d 1243, 1245 n.1 (1st Cir. 1970) (jurisdiction exists under §1361 for §221(d)(3) tenants seeking a hearing prior to rent increases).

As is shown in Point IV infra, HUD's decision was improper and erroneous, because it was based on data which was insufficient to justify the decision, and which was also incomplete. Because of this, plaintiffs are being subjected to a rent increase which constitutes a substatial deprivation of their property rights. This Court should therefore exercise its jurisdiction in this case to overturn the approval of increase by HUD.

POINT II

PLAINTIFFS SHOULD PROCEED AS REPRESENTATIVES OF A CLASS OF PERSONS SIMILARLY SITUTATED.

Plaintiffs, all tenants of Grace Housing Development Co., Inc., (Grace HDFC), seek declaratory and injunctive relief on behalf of themselves and others similarly situated to redress defendants' failure to give tenants notice and an opportunity to be heard before application for or approval of a general rental increase. This constitutes a deprivation of rights equally guaranteed to all tenants by the constitution and laws of the United States and regulations thereunder.

Class actions have been generally granted in cases involving tenants due process rights prior to rent increases in publicly subsidized housing. Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973); Marshall v. Lynn, 497 F.2d 643 (D.C. Cir. 1973). See also, Escalera v. N.Y.C.H.A., 425 F.2d 853 (2d Cir. 1970), cert. den., 401 U.S. 994 (1971). In the present instance the plaintiffs meet the requirements of Rule 23, and a class action is appropriate.

A. Plaintiffs Meet All Requirements of Rule 23(a).

With respect to Rule 23(a)(1), the class is so numerous that joinder of all members is clearly impracticable. There are 167 tenants in Grace Towers who will be affected by the rent increase. This is an unwieldy number to join in one action. The absence of a class action might result in parties being added throughout the course of litigation. Not only would this be burdensome on the Court's time but the costs to the public of plaintiffs' and HUD's counsel, both supported by tax derived funds would be increased by the raising of unnecessary procedural issues, or even in the bringing of new actions for other plaintiffs on the same grounds. Weinstein, The Class Action is Not Abusive, N.Y.L. Jour. May 1, 1972, p. 1.

All the significant questions of law and fact in

this case are common to the entire class, as required by Rule 23(a)(2). This case challenges the procedures followed by defendants in applying for and approving a general rent increase in Grace Towers, and the substantive determination reached, resulting in a 23% across-the-board increase. Although various members of the plaintiff class might have to pay individually differing amounts of rent increases, nevertheless, they are all in exactly the same position as regards the facts concerning the application, its contents, and its approval. Likewise, the same legal theories apply in each situation. See cases cited supra p.12.

Plaintiffs claims as representative parties are typical of the claims of the class as required by F.R.C.P. 23(a)(3). For the claims of the representative parties to be typical of the class, their interests must be co-extensive with, compatible with and not antagonistic to those of class members represented. 1 Moore's Manual, Federal Practice and Procedure § 14.07 (1973).

In the instant case, the named plaintiffs are in every respect fully representative of the class. They, like all members of the proposal class, are tenants of Grace Towers and are lower income individuals or families. Their claims are typical of all the other members of the class. See discussion of Rule 23(a)(2), supra.

F.R.C.P. 23 (a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." In the present instance, the named plaintiffs have common stakes in the outcome of this suit with other class members. As already pointed out, the interests of named plaintiffs and of all other tenants are virtually identical, and because of the serious effect of this steep rent increase herein on these lower income families, the named plaintiffs can be relied on to vigorously pursue this action to its fullest extent to protect their common interests.

B. A Class Action Should be Maintained Herein Pursuant to F.R.C.P. 23(b)(1)(B) or 23(b)(2).

Rule 23(b)(2) is intended to permit class actions, particularly in the civil rights field, where injunctive or declaratory is sought. Advisory Note, 39 F.R.D. 98, 102 (1966). A class action is appropriate herein based on that Rule, in that defendants' conduct in imposing a rental increase without prior due process will affect the civil rights of all members of the class as discussed above, "thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Advisory Committee Note, supra, at 102. Additionally, review of FHA action by this Court would, if plaintiffs' claims are upheld, result in mandatory on similar injunctive relief reversing the agency action both on procedural due process

grounds and on the ground that the application substantively fails to warrant approval of an increase.

The class is also appropriate under Rule 23(1)(B), F.R.C.P. in that separate actions may substantially harm the ability of non-parties to protect their interests since the outcome of the litigation may well dispose of their cases on the basis of stare decisis. 1 Moore's Manual §14.07 [2]. Class members should have the opportunity to have their interests directly represented.

Plaintiffs have met, in all respects, the requirements of F.R.C.P. 23(a). In addition, they come within the situations described in Rule 23(b)(1)(B) and 23(b)(2) in which class actions are appropriate. The Court should therefore direct that this action be maintained as a class action. Burr v. New Rochelle Municipal Housing Authority; Marshall v. Lynn; Escalera v. N.Y.C.H.A., all supra.

POINT III

DEFENDANTS FAILURE TO GRANT PLAINTIFFS DUE PROCESS OF LAW INVALIDATES THE RENT INCREASE.

A. Plaintiffs have Property Interests Protected By Procedural Due Process.

Plaintiffs have property rights in protection of which the District Court should grant injunctive relief. Burr v. New Rochelle Housing Authority, 479 F.2d 1165 (2d Cir.

1973) [involving an "across-the-board" 10% rent increase (characterized as a "service charge" by that Authority) to tenants in a municipal housing project].

In the instant case, one of the property rights at stake are rights to monies plaintiffs must pay in additional rent charges incurred as a result of a HUD approved and Grace HDFC initiated rent increase. This property right is substantial in size, representing an increase of 23% over current rents.

The proposition that monetary property is entitled to protection under the Civil Rights Act, 42 U.S.C. §1983 was specifically sustained in Lynch v. Household Finance Corporation, 405 U.S. 538, 542-545 (1972) involving a state garnishment statute where the debtor successfully challenged a levy by Connecticut Sheriffs on her savings account and garnishment of it by creditors, prior to notice or opportinity to be heard, a process then permitted under Connecticut law.

The property rights are substantial in size, although the size of the property loss is not dispositive of the issue of tenants' rights to due process. Burr, supra at 1168; Escalera, supra at 864. Twenty-three per cent of current rent represents a large portion of plaintiffs' incomes. Plaintiffs have low or moderate incomes with a substantial number in receipt of supplemental welfare or

or full welfare assistance. These increases could well result in forcing families to reduce their food budgets so as to be able to pay rent, or even result in their eviction because of inability to pay the rent.

Additionally, Grace HDFC, under New York law, is entitled to enforce the decision permitting an increase by means of summary proceedings for possession of apartments of those who do not pay the increase.* This would result in the loss of even more valuable property rights in the tenant's apartment. See Langevin v. Chenango Court, Inc., supra, 447 F.2d 296, 305 (Oakes, J., dissenting), and cf. Burr v. New Rochelle Munic. Hsg. Auth., supra, 479 F.2d 1165, 1168; Escalera v. N.Y.C.H.A., supra, 425 F.2d 853, 864.

Plaintiffs also have additional property rights in Grace Towers. As discussed in Point I, plaintiffs have the right to elect to convert Grace Towers into a tenant cooperative. This property interest would be terminated if a tenant were forced to move or were evicted for inability or failure to pay the increase.

Defendant Grace HDFC, through an agreement with HDA has committed itself to a conversion of the non-profit corporate entity into a cooperative. The agreement provides

* It should be noted that in view of the size of the increase, 23%, and the low and moderate incomes of the tenants, this possibility is not at all remote.

that within six (6) months of initial occupancy it would move towards this goal, that it would, on renting up the building notify each tenant of this commitment.* (See Exhibit 1, Agreement with HDA Addendum to Article III.)

Present tenants clearly are intended to be the ultimate owners of this development and now have a legally enforcible right as third party donee beneficiaries under the agreement between Grace HDFC and HDA to elect cooperative ownership of Grace Towers. Greenberg v. N.Y., 152 Misc. 488, 274 N.Y.S. 4 (S. Ct. N.Y.Co. 1934), holding rules of law regarding municipal contracts are not different from those of other contracts; Corbin on Contracts §775 (1952) (promised conveyance of land is a property interest).

Since plaintiffs have significant property interests affected by the rent increase, the court should determine that plaintiffs are entitled to procedural due process to protect these rights.

B. Plaintiffs, as primary beneficiaries of §221(d)(3) of the National Housing Act, are entitled to procedural due process with respect to rent increases.

The rights of tenants in housing projects subsidized pursuant to §221(d)(3) of the National Housing Act, 42 U.S.C. §1715 l (d)(3), to due process prior to rent

* In fact, defendants have not to date taken any steps to fulfill their obligations to plaintiffs under this section of their contract with the City. This does not, however, diminish the right provided in the contract.

increases, have recently been affirmed by the District of Columbia Circuit in Marshall v. Lynn, 497 F.2d 643 (D.C.Cir. 1973). In Marshall and its companion cases, Thompson v. Washington, 497 F.2d. 626, and Tenant's Council of Tiber Island-Carrollsburg v. Lynn, 497 F.2d. 648 (D.C. Cir. 1973), the Court conducted a thorough examination of the meaning and statutory history of the National Housing Act and various of its sections, including §221(d)(3), involved here and in Marshall. The court there found as a result of its statutory analysis, that low and moderate income tenants, rather than private developers were the intended beneficiaries of this provision. Id. at 647.* As such, they were entitled to the same procedural due process prior to rent increases as were public housing authority tenants under the companion case of Thompson v. Washington. Ibid.

This contrasts with the earlier decision of Langevin v. Chenango Court, Inc., 447 F.2d. 296,301 (2d. Cir. 1971), in which a majority (Judge Oakes dissenting) held

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* In the original 1954 enactment, the court found, §221 projects were designed to house persons displaced from urban renewal areas. Through successive amendments developing out of the experience that many §221 projects had failed to provide housing to intended beneficiaries (often because actual rental charges were well beyond their means), Congress reinforced its commitment to providing housing and concommitant rent regulation to low and moderate income tenants of §221(d)(3) developments. The most significant means of accomplishing this goal, the Marshall court held was the addition of mortgage interest subsidies on "§221(d)(3)" projects, Marshall v. Lynn, supra at 648.

that Section 221(d)(3) was primarily intended to benefit private developers, and thereby induce them to enter the low-income housing market. Chenango Court, Inc. was in fact just such a private for-profit developer, id. at 298. The considerations of the Langevin court do not apply however, to a situation, such as the present, in which Grace HDFC, the developer, is a not-for-profit corporation organized precisely to benefit its tenants rather than to receive benefits itself. This is particularly true where the sponsor, in addition to being not-for-profit, is enmeshed in a "web of state involvement spun by the state," Male v. Crossroads Associates, Inc., supra, 469 F.2d 616, 622 (2d. Cir. 1974) and "governed by phalanx of state and federal regulation" sufficient to result in characterization of its acts as state action, Lopez v. Henry Phipps Plaza South Inc., supra, 498 F.2d. 937, 942 (2d Cir. 1974).* See Point I-A, supra.

Furthermore, the Langevin Court found that while HUD had statutory authority to promulgate regulations giving §221(d)(3) tenants an opportunity to be heard with respect to

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* Of some significance also may be the fact that Judge Friendly wrote the opinions both in Langevin and in Lopez, which contains at p. 942 and caveat, cited in Point I-A, that the question of due process in rent increase cases is still open.

such increases, it need not and had not done so in existing regulations, 24 C.F.R. §221.501 et seq. HUD could as well, the Court reasoned, have given the tenants such rights in the regulatory agreement it had signed with the owner, but had not and was not required to do so,

In contrast, the position of the D.C. Circuit has recently been reinforced by new HUD regulations published in Vol. 39 of the Federal Register, on September 11, 1974, at pp. 32736-39 inclusive, and effective October 14, 1974 (and therefore presently in effect). These regulations amend Title 24 C.F.R. by adding a new Part 410, and particularly new Sections 410.71-410.74, which grant tenants of federally aided housing, particularly including both §221(d)(3) projects and those receiving rent supplementation, the type of procedural due process with respect to rent increases which plaintiffs seek in this case. id., §410.1, 39 F.R. 32738, col. 1 (Sept. 11, 1974).

HUD states as its reasons for these rules that it is "highly desirable" to have tenant participation in proposals to increase rent schedules in these projects. In addition, the agency finds that "a uniform nationwide policy for tenant participation in both public and subsidized rent increase proposals is urgently needed." Supra, 39F.R.

32737, col. 1, Sept. 11, 1974.*

The HUD position as expressed in the regulation, is an acknowledgement by HUD itself of the primary purpose of §221(d)(3) as determined by the Marshall Court. HUD accepts the necessity of having tenant participation in the rent increase process not only because this is "desirable", but also because of difficulties caused by the differing approaches to the issue used by different HUD regional offices as a result of different decisions in the Circuit Courts Appeal. **

Even beyond the purpose of §221(d)(3) as enacted by Congress, however, the facts of this case clearly demonstrate that the plaintiffs are the intended beneficiaries of all

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* In view of HUD's stated reasons for promulgation of the new regulation, particularly in light of the Marshall decision, and this Circuit's view of the desirability of such regulations, Langevin v. Chenango Court, Inc.,447 F.2d 296, 301-302 (2d Cir. 1971), this Court may ultimately deem it appropriate to remand the matter to the Agency for reconsideration in view of the new regulations.

** The dissent in the third of the rent increase trilogy, Tenant's Council of Tiber Island-Carrollsburg should also be noted. Here, the majority held that under §220 of the Act, tenants in a project built on low-cost urban renewal land with a FHA mortgage were not entitled to due process because they were not the principal intended beneficiaries, since this section was not passed to benefit a particular class of tenants. The dissent argued that the "reasonable rent" requirement of §207(b)(2) of the Act, implemented by 24 C.F.R. 207.19(e), nevertheless created a requirement for due process even for these generally higher-income tenants.

the federal, state and city aid that made Grace Towers possible.

The facts showing this are set forth at length in the Complaint and exhibits. Much is summarized in the facts and Point I-A of this Memorandum. But in addition to all this, Defendant Grace HDFC committed itself, in its agreement with HDA, to press toward conversion to a tenant-owned co-operative, within six months of occupancy. Although this requirement has not yet been carried out, it clearly shows the intent of all the parties to make the tenants not only the "principal" but the sole beneficiaries, by removing the "developer" entirely.

HUD's granting of §221(d)(3) and other subsidies to Grace HDFC, and its Regulatory Agreement with them entered into after the date of the City agreement, constitutes a ratification by HUD of that agreement and the purposes thereunder for which HUD's funds would be used. These purposes, therefore, considered together with the statutory purposes and the HUD regulations, clearly sustain a finding that HUD acted in this case primarily for the benefit of plaintiffs, and is therefore bound to accord them due process of law prior to any rent increase.

C. The Rent Increase Should be Voided as Violative of Due Process of Law.

A non-profit housing company which has extensive federal, state and municipal financial aid and whose operation is pervasively regulated by the U.S. Department of Housing and Urban Development, the New York State Department of Housing and Community Renewal and the New York City Housing and Development Administration acts under color of state law. See Point I, supra: Burr v. New Rochelle Municipal Housing Authority, 479 F. 2d 1165, 1167 (2d Cir. 1973), Lopez v. Henry Phipps Plaza South, Inc., 498 F. 2d 937, 942, 942n. 1 (2d Cir. 1974).

Such a housing company is, as a consequence, subject to the same procedural due process requirements with respect to a rent increase that are applicable to a Municipal Housing Authority.

Cf. Marshall v. Lynn, 497 F. 2d 643, 648 (D.C. Cir. 1973); Thompson v. Washington, 497F. 2d 626, 640-41 (D.C. Cir. 1973)

The entanglement of defendant Grace HDFC in a "web of State involvement spun by the state" has been set forth at length in Section D of the complaint and discussed in Point I-A of this Memorandum, establishing that defendant Grace HDFC, acting under color of state law, must accord plaintiff tenants procedural due process under the 14th Amendment.

Another circuit has held, as well, that mere

acceptance by a housing company of mortgage subsidy assistance under § 221 (d) (3) of the National Housing Act, requires it to provide, pursuant to the Act, tenants with procedural due process with respect to rent increases. See Marshall v. Lynn, 497 F. 2d 643 (D.C. Cir. 1973).

On this ground defendant corporation, a recipient of a § 221 (d) (3) mortgage subsidy, must accord plaintiffs their statutory rights to procedural due process. Marshall v. Lynn, supra at 647.

While all the actions of a housing instrumentality operating under color of state law or the acts of government itself must accord with procedural due process, different classes of acts give rise to different due process requirements.

The extent of procedural due process a party agrieved by government actions is entitled to is set forth in Goldberg v. Kelly, 397 U.S. 254, 266-271 (1970). This is determined by the nature of the government function involved, the private interest that has been affected by government action and "depends on whether the recipient's interest in avoiding the loss [as a result of government action] outweights the government interest in summary adjudication." Goldberg, supra at 264.

This standard has been recently applied in this Circuit in Burr v. New Rochelle Municipal Housing Authority, 479 F. 2d 1165, 1168-1170 (2d Cir. 1973) to a 10% rent increase (characterized as a "service charge") sought by a state and locally aided housing authority. Accord Thompson v. Washington, 497 F. 2d 624, 633-641 (D.C. Cir. 1973).

The interest at stake in the instant situation, as in Burr, is plaintiff tenants' rights not to have their property (their money, their rights to be secure in their homes where replacement housing is not readily available or their right to a cooperative conversion) taken without due process.

The Burr Court found that answering the question of whether an owner was entitled to a general "across the board" rent increase had to be based on technical considerations requiring a high degree of expertise and did not turn on specific factual questions as would require an evidentiary hearing. Burr, supra at 1169. Such a hearing the court further decided would be unduly burdensome on the agency in that it could involve testimony from hundreds of tenants a most unwieldly and time consuming process.

However, the Burr court held it would not be unduly burdensome, in view of the nature of the tenants' interests, for the body making the determination to give advanced

notice of the increase, an opportunity to submit and have considered prior to the determination material in opposition and have a written determination with supporting reasons. Burr, supra at 1170. Accord Marshall v. Lynn, supra at 648; Thompson v. Washington, supra at 640-641.

As discussed in POINT III B, supra, HUD itself, effective October 14, 1974, has established a due process procedure in line with those set forth in Burr, supra and Marshall, supra, applicable to, among other subsidized housing programs, "§ 221 (d) (3)" and "rent supplement" housing, 24 C.F.R. § 410, as amended. The language in the regulation that it is "highly desirable" to have tenant participation in the rent increase process and that there is a great need for a uniform national approach to the issue, amounts to an admission by HUD of the appropriate process for deciding whether a rent increase is justified. HUD's promulgation of regulations establishing this procedure is an acknowledgement, as well, that it would not be unduly burdensome for HUD to administer.

There can be no dispute, in the present case, that the application for a rental increase for Grace Towers was submitted to FHA, and approved by FHA, without any prior notice to Plaintiffs, or opportunity for them to be heard on the question. Because Plaintiffs were entitled to the

procedures discussed here, the rental increase must be set aside by this Court until they have been granted their full rights under the Constitution, statutes and regulations. Burr v. New Rochelle Municipal Housing Authority, 479F, 2d 1165 (2d Cir. 1973); Marshall v. Lynn, 497 F. 2d 643 (D.C. Cir. 1973); Thompson v. Washington, 497 F. 2d. 626 (D.C. Cir. 1973); and cf. Lopez v. Henry Phipps Plaza South, Inc.; 498F. 2d 937, 942 (2d Cir. 1974), all supra.

POINT IV

HUD'S APPROVAL OF A RENT INCREASE, BASED ON INSUFFICIENT AND INCOMPLETE EVIDENCE, WAS ERRONEOUS AND SHOULD BE REVERSED.

In return for a 3%, below-market rate mortgage subsidy and FHA mortgage insurance, Grace HDFC agreed, in accordance with the statute, to regulation of rents by the Secretary to"effectuate the purposes of [§221(d)(3)]", which the Court in Marshall found was to benefit low-income tenants. Marshall v. Lynn, supra. To carry out this duty, HUD has promulgated regulations, 24 C.F.R. §§221.501 et seq. governing the application for increase and criteria for approval or disapproval. §221.531(c) requires that the agency must take into consideration the need to provide "reasonable rentals" to the project's low and moderate income tenants,

together with the "income necessary to maintain the economic soundness of the project."

A. Grace HDFC's Application was on its Face Insufficient to Warrant Approval.

In the case of Grace HDFC, a not-for-profit corporation whose sole asset is the Grace Towers project, and whose sole corporate purpose is to provide housing to low income families, HUD in considering any application for rental increase, must exclude from its calculations any profit or return on investment and may consider only valid operating expenses in determining economic need.*

Plaintiffs received from FHA, in response to their request, copies of all of Grace HDFC's materials in support of the increase application.** These were submitted to the certified public accounting firm of Hoffberg, Oberfest & Burger, which is experienced in accounting, audits and

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* The sponsor, of course, may not circumvent the statutory required against received profits or returns on investment by providing its own management and then paying corporation board members an unlawful profit. New York Not-for-Profit corporation law §515(a) (McKinney's Vol.37) In the instant case as set forth in the affidavit of Elizabeth Boone, paragraphs 13 and 14, Grace HDFC's chairman, defendant Underwood, is apparently head of the management operation, and upon information and belief members of Grace HDFC's board of directors are also paid employees of said operation. Any salary or compensation received by them and not provided for in the Articles of Incorporation or in the by-laws would be in violation of law. N.F.P.C. Law §515(b).

** Copies of letters exchanged with FHA and of the materials are reproduced as Exhibits 4 and 5 to the Complaint.

management of federally subsidized housing developments.

On examination, the materials were found to be so insufficient that the accountants were completely unable to express an opinion as to whether any increase was justified. (Affidavit of Stanley Berger, Esq., C.P.A., a partner in the firm, annexed as Exhibit 7 to Complaint.) Several critical omissions were found, including lack of proper fuel, electric and gas bills, and lack of rent roll information.*

Without this information, therefore, HUD lacked the substantial evidentiary foundation necessary for a rational determination of the economic need of Grace HDFC, as well as of the "reasonableness" of the rentals, after a 23% increase, for low and moderate income tenants. This falls short of the test of "substantial evidence" (5 U.S.C. §706(2)(B)) as "...such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Noble Drilling Corporation v. Donovan, 266 F.Supp. 917, 926 (E.D.La 1967); Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 490 (1951). This standard goes to the reasonableness of what the agency did on the basis of the evidence before it. J.A. Terteling & Sons, Inc. v. U.S., 390 F.2d 926, 931 (Ct.Cl. 1968). Use of such improper information as the basis of its decision also

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* The accountant stated that a copy of Grace HDFC's management agreement(s) and certified annual financial statements would also be required for a proper and complete analysis.

goes clearly beyond the discretion of the agency, and certainly is not a determination rationally related to the standards the agency is presumably applying, so that the decision likewise violates 5 U.S.C. §706(2)(A) (decisions which are arbitrary, capricious or abuse of discretion subject to reversal.) Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415 (1971).

B. Information Improperly Withheld From FHA, Which Plaintiffs Would Submit at a Hearing, Warrants Denial of the Increase.

The Secretary's approval of the rent increase was unjustified, not simply because the application did not establish as sufficient basis for it, but still further because additional information, which defendants Grace HDFC, Underwood and Evans (so far as plaintiffs know) failed to give to FHA, shows that the project has additional income, and is in numerous ways deficient in services and in violation of FHA regulations,

i) Additional Income

As set forth in plaintiffs' complaint and affidavits, tenants of Grace Towers have been required to pay fees for rental of apartments in the project, for transfers between apartments within the project, for parking spaces in the parking lot, for use of the community room, and for repairs. There is also a coin-operated laundry in the basement. Plaintiffs do not claim to know the full extent or amounts of such

charges, but they apparently are frequent practices. Insofar as plaintiffs know, these were never reported to FHA as income. This is a clear violation of 24 C.F.R. §221.542(a), requiring an accounting to the Commissioner for all income.* Additional income of course, reduces the need for an increase.

ii) Substandard Conditions

The physical conditions of Grace Towers fall far short of FHA's requirements, and in some instances, are distinctly hazardous. As detailed in plaintiffs complaint and affidavits, the project suffers from hazardous and inadequate wiring, roof leaks, causing damages to some tenants apartments, and inadequate heat in some apartments all this in a project less than four years old.**

These shortcomings are in violation of state and local law, which also serve as standards for HUD for buildings with FHA mortgage insurance. 5 U.S.C. §1715 l (d)(2); 24 C.F.R. §221.545(c). Furthermore, they violate plaintiffs' rights under their leases. Most significantly, however, full performance of these obligations, lacking here, is a pre-requisite

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* It appears that no approval has been given by FHA for the imposition of these charges, through approval of a lease or otherwise. This violates 24 C.F.R. §221.530(a) which prohibits unsanctioned charges.

** Plaintiffs were also, as an inducement to renting apartments, given promises of other services, never in fact provided, on which they feel entitled to rely. These include guard services, a playground, and gates on ground floor windows.

for FHA approval of any increase in rents. 5 U.S.C. §706(2)(A), (B), (D), (E); 24 C.F.R. §221.545(c).

All of the foregoing shows the flagrant manner in which the requirements of FHA have been flouted, chiefly by withholding required information. Plaintiffs believe nevertheless that this is only the tip of the iceberg, and that given opportunity, much more can be shown. But this alone is sufficient to show that the increase here results from violations of FHA's own regulations and should be set aside by this Court.

POINT V

PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION

Rule 65, F.R.C.P. sets out two tests for the granting of a preliminary injunction. First, the party must show that irreparable harm will result if relief is denied. Second, the party must show a probability of success on the merits. Plaintiffs clearly meet these tests. Injunctive relief under these standards has already been granted in a case involving a rent increase sought by a public housing authority. Burr v. NRHA, 347 F. Supp. 1202 (S.D. N.Y. 1972), affm., 479 F. 2d 1165 (2nd Cir. 1973).

A. Plaintiffs Will Suffer Irreparable Harm Without the Relief Sought Here.

Defendants Grace HDFC, Underwood and Evans are

seeking orders of possession against named plaintiffs and other tenants in summary proceedings in the Civil Court of the City of New York, Housing Part, for non-payment of rent including a 23% rent increase approved of by defendant HUD. Upon information and belief this would amount to between $39.10 and $59.35 a month depending on the size of apartment and the income of the particular tenant. Named plaintiffs and those they represent are ready, willing and able to pay rents at pre-increase levels and have in many cases actually tendered these amounts to defendant Evans. Defendant Evans has refused these amounts unless plaintiffs and other class members sign new leases at rentals including the 23% increase. Unless defendants are restrained and enjoined from pursuing the above proceedings by this Court, plaintiffs face the possibility of eviction from their homes long before this matter can come to final judgment on the merits.

At stake for plaintiffs are decent apartments, at reasonable rentals, the relative stability of their home lives and the possibility of cooperative ownership of Grace Towers. If they are evicted, it is most unlikely that they will be able to find comparable housing. In view of the extremely low apartment vacancy rate in New York City, plaintiffs would have difficulty finding decent, safe and sanitary accommodations at prices they can afford. They would suffer, as well, personal expenses and hardships as a result of removal.

And should the Court eventually find for plaintiffs after their eviction, their apartments will almost certainly be rented to others, making it difficult or impossible, as a practical matter, for them to return to their apartments.

Should plaintiffs and class members, lower income tenants, on the other hand, be required to pay the 23% rent increase during the pendency of this action, they well may have to reduce food budgets and eliminate other necessities of life in this highly inflationary economy. This will be expecially hard on families with young growing children of whom there are many in Grace Towers. Damage done to children by malnutrition is, of course, often irreversible.

Balanced against the irreparable injury to plaintiffs and the suffering which it would entail is the relatively negligible injury to defendants if plaintiffs remain in their apartments and continue to pay their pre-increase rents to defendants pending the resolution of this case. In the event this Court should ultimately uphold the rent increase, plaintiffs could pay the retroactive increase over a suitable period of time. This would eliminate, as well, a need for the court to require plaintiffs to post security under Rule 65(c) F.R.C.P.. Bass v. Richardson, 338 F. Supp. 478, 489-491 (S.D.N.Y. 1971); cf. Steward v. West, 449 F. 2d 324 (5th Cir. 1971).

As was noted above, many of plaintiffs and class

members are poor persons and recipients of full or supplemental welfare assistance. Bass, a class action involving an injunction to restrain cut-backs in benefits under a state medical aid program, held that such poor persons by definition are unable to post security under rule 65(c) Bass, supra at 490; cf. Steward v. West, supra.

B. Plaintiffs have a high probability of success on the merits.

Plaintiffs have shown in Point IV above that the information in FHA's possession, as well as information defendants failed to submit to FHA, may demonstrate that the increase is improper and should not have been allowed. This alone might well be enough to justify a preliminary injunction.

Even more significantly, plaintiffs have clearly established in Point III that defendants' acts have denied them due process of law with respect to imposition of the 23% increases in monthly rentals. The facts in this regard are undisputed.

A denial of basic rights such as are involved in this case, clearly supports a decision by the Court in favor of plaintiffs, and therefore warrants, particularly in view of the hardships to plaintiffs, the issuance of the preliminary relief sought here.

Furthermore, where, as here, the "balance of hardship tips decidedly" in favor of plaintiffs, even a lesser

showing of merit than plaintiffs have made would be sufficient to warrant preliminary relief.

> "(W)here the balance of hardships tips decidedly toward the party requesting the temporary relief. "...the moving party may obtain a preliminary injunction if he 'has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation and thus for more deliberate investigation...'"

Gulf and Western Indus., Inc. v. Great A & P Tea Co., Inc., 476 F. 2d 687, 692-93 (2d Cir. 1973) (citations omitted; emphasis is the Court's).

C. The Court Should Issue a Preliminary Injunction.

These facts, therefore, satisfy the two requirements for a preliminary injunction under Rule 65(a) F.R.C.P. and warrant the waiver of bond pursuant to Rule 65(c), and a preliminary injunction should be granted.

CONCLUSION

For all the foregoing reasons, plaintiffs request that the relief sought herein be granted.

Respectfully submitted,

THOMAS N. ROTHSCHILD
Attorney for Plaintiffs

ON THE BRIEF

THOMAS N. ROTHSCHILD
IGOU M. ALLBRAY,
Law Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACE TOWERS TENANTS ASSOCIATION, et al.

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.

Defendants.

Civil Case No. 74C 1714

DEFENDANT'S MEMORANDUM OF LAW

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SHELDON OSTRO,
Of Counsel

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Preliminary Statement

This is a class action commenced by a tenant's association against the owner of a federally subsidized housing project which seeks to annul a rent increase on the ground that the tenants were denied due process of law in the granting of the increase by the Secretary of Housing and Urban Development; further that the material submitted by the owner did not justify the increase, and third, that there is a lack of services and irregularities existing in the project which should have denied to the owner the increase granted by the Secretary of Housing.

The instant proceeding is for a preliminary injunction and for permission to proceed as a class action and for a waiver of the requirement of a posting of security.

Questions Presented

1. Should a preliminary injunction be granted?

2. Should an order be entered allowing this action to proceed as a class action?

3. Should an order be entered waiving the requirement of the posting of security by the plaintiff?

Statement of Facts

Grace Housing Development Co., Inc. is a non-profit housing corporation incorporated for the purpose of providing housing to families of low and moderate income in Grace Towers, Grace Towers consists of two buildings of 84 units each, at 272 Pennsylvania Avenue and 2066 Pitkin Avenue, Brooklyn, New York, together with a presently unrented commercial building on the premises. The project is federally subsidized and Grace receives rent supplementation from about 10% of the tenants.

In June of 1974, Grace being unable to continue operating with the present rent levels, faced with enormous oil rate and electric rate increases, and the general inflationary costs of running such a project, made application to the Secretary of Housing and Urban Development for rent increases. The Secretary asked for, and received all the information requested by Grace to show the cost of operation, income received, balance sheets prepared by its accountants, and all other requested material. The Secretary of Housing and Urban Development then granted an"across-the-board" 23% rent increase in August, 1974, to become effective October 1, 1974.

On August 27, 1974, Grace sent letters to all tenants advising them of the increase to go into effect on October 1, 1974. Further, Grace requested, and in fact held a meetingwith all the tenants to explain the need for the increase.

Thereafter, some tenants contacted Thomas Rothchild, an attorney associated with East New York Legal Services, Brooklyn

Legal Services Corporation "A" Counsel then contacted HUD and several letters were exchanged. Meetings were held between representatives of HUD and the tenants were shown all of the documentation submitted by Grace to justify the increase.

Subsequently, after submitting no new evidence in opposition to the increase, the tenants, some of whom formed the tenants association and their counsel took no legal action to test the validity of the increase. In October, about 30% of the tenants refused to pay any rent and to this very day have paid no rent to Grace, placing Grace close to insolvency.

On December 1, 1974, Grace commenced a summary proceeding against one tenant in Civil Court, Kings County, Housing Part, to collect the rent owed. Thereafter, the present action was commenced Three affidavits were submitted: one by counsel for the plaintiff, one by the President of the plaintiff, and one by the Secretary of the plaintiff. The Secretary of the plaintiff subsequently has signed a new lease with Grace and has consented to the increase in rent.

On December 6, 1974, plaintiff made application for a Temporary Restraining Order to restrain Grace from commencing any proceedings in State Courts to collect the rent from tenants together with the increase. This application was denied and a hearing on the application for a preliminary injunction was thereafter set down for a hearing.

POINT I

THE PLAINTIFF IS NOT ENTITLED TO A PRELIMINARY INJUNCTION BECAUSE DUE PROCESS HAS NOT BEEN DENIED AND IRREPARABLE HARM WILL RESULT TO THE DEFENDANT GRACE IF SUCH INJUNCTION IS GRANTED

The authority for the issuance of a preliminary injunction is to be found in Rule 65 of the Federal Rules of Civil Procedure.

In the case of Yakus v. United States (1944) 321 US 414, it was held that such an injunction was never regarded as strictly a matter of right.

However, the Court will grant an injunction, and properly so, only when it is satisfied that there is a probable right and a probable danger that the right may be defeated unless the injunction is issued; that the danger to the plaintiff if the injunction is denied, plainly outweighs any foreseeable harm to the defendant. Ross-Whitney Corp. v. Smith Kline & French Labs, 207 F 2d 190. Also, United States v. Ray-O-Matic Corp. 152 F. Supp. 791.

In this case, the exact opposite is true. The result of granting such a preliminary injunction will place the defendant Grace, who has been already granted an increase, in a position of incolvency. The increase itself was granted to save Grace from going insolvent. The granting of the injunction will result in irreparable harm to the defendant Grace. The tenants will not be harmed because even if the increase is annulled after trial, the tenants can easily receive back to the payments by a waiver of rent by Grace.

The interests of both parties should be safeguarded and where a preliminary injunction would permit the plaintiff to obtain an undue advantage by tying the hands of the defendant, it has been held to be improvident for the Court to grant such an injunction. Foundry Services v. Beneflux Corp. (1953) 206 F 2d 214; Corica v. Ragen (1944), 140 F 2d 406; Paramount Pictures Corp. v. Holden (1958) 166 F Supp. 684.

The burden of showing a right to injunctive relief rests with the applicant (the plaintiff) and that burden requires a showing of irreparable harm if the injunction is not granted. Foundry Services v. Beneflux Corp. Supra; Sims v. Greene (194) 161 F 2d 87. No such burden has been satisfied in this case. The affidavits submitted by plaintiff in its application are filled with hearsay and nowhere shows irreparable harm. The plaintiffs have paid no rent at all for four month. The irreparable injury is to the defendant Grace, not the tenants.

The plaintiff had ample opportunity to contest the increase. They were not satisfied with the response of HUD to their compl ints with regard to the increase yet, they took no action prior to the effective date of the increase. The brought no proceedings. Even after the increase went into effect, they did nothing. They have allowed four months to go by without taking any legal action. Letters with HUD were exchanged; they examined all of the documents on file; they held meetings with representatives of HUD; any due process requirements have been satisfied.

In addition, the plaintiffs have shown no reasonable probability of success. Their affidavits in support of the application for a preliminary injunction sets forth nothing of any substance that would justify a rollback of the increase.

POINT II

THE PLAINTIFF HAS NOT SATISFIED ALL THE PREREQUISITES NECESSARY TO ALLOW PLAINTIFF TO PROCEED WITH A CLASS ACTION

The Rule governing class actions is Rule 23 of the Federal Rules of Civil Procedure.

Under Rule 23 in order for class action to be maintainable certain prerequisites must be met. The relevant portion of the rule reads as follows:

> "(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
> '(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied,..."

In the instant case the representative parties (the tenants association) cannot fairly and adequately protect the interests of the class, and counsel for the plaintiff likewise cannot meet this test of subdivision (4) of Rule 23 (a).

The Tenant's Association does not represent or have the sympathy of most of the tenants. More importantly, the Secretary of the Association ("Boone") who made one of the affidavits in support of this application has afterward voluntarily signed a new lease inclusive of the rental increase.

Counsel for the plaintiff is a corporation authorized to provide legal assistance to persons who lack the means to obtain private counsel. In order to qualify for representation by plaintiff's counsel, applicants must need certain income level criteria. Counsel has already conceded that he could not represent certain tenants of this project in summary proceedings in state courts because their income exceeded his authority.

In determining whether the parties suing adequately represent the persons on whose behalf they sue the Court must consider whether the interest of the representative are antagonistic to the members of the class. Gabrid v. Standard Fruit S.S. Co. (1971) 448 F 2d 724. In this case most tenants have not chosen to join the association and in fact the Secretary of the association has since signed a lease consenting to the increase.

With regard to counsel's representation, Judges Medina and Hays stated in part:

> "What are the ingredients that enable one to be termed an 'adequate representative of the class?' To be sure, an essential concommitant of adequate represenation is that the party's attorney be qualified, experienced and generally able to conduct the proposed litigation. Additionally, it is necessary to eliminate so far as possible the likelihood that the litigants

'are involved in a collusive suit or that plaintiff has interests antogonistic to those of the remainder of the class..." Eisen v. Carlisle & Jacquelin (1968) 391 F 2d

In this case, should defendants be successful, there is a distinct possibility that those tenants whose income would put them outside of being able to be represented by counsel in this case, would have the right to claim that they could not be bound by a case in which counsel could not represent them on an individual basis. This would subject defendants to an inconclusive judgmert and the possibility of a multiplicity of law suits, which would negate the very purpose of a class action.

POINT III

ALL MEMBERS OF PLAINTIFF ARE NOT INDIGENT AND IF THE INJUNCTION IS GRANTED SECURITY SHOULD BE REQUIRED.

Plaintiff makes no allegation that it represents indigents. The remedy asked for is severe and drastic. Defendant Grace may become insolvent thereby. It should be protected for damages suffered if it is finally successful and the preliminary injunction has been granted. United States v. Onon, (1951) 190 F 2d 1. It has been held to be legal error to fail to require security when it should be given under Rule 65 (c) Hopkins v. Wallis (1949) 179 F 2d 136.

CONCLUSION

IN VIEW OF ALL THE FOREGOING FACTS IN THIS CASE AS WELL AS THE APPLICABLE LAW, THE RELIEF SOUGHT SHOULD BE DENIED.

Respectfully submitted,

GREENER & OSTRO
Attorneys for Defendant, Grace
Underwood & Evans
Office & P.O. Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

GRACE TOWERS TENANTS ASSOCIATION, et al.

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.,

Defendants.

----------x

AFFIDAVIT

Civil Case No. 74C1714

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SHELDON OSTRO, being duly sworn deposes and says:

I am a partner in the firm of Greener & Ostro, the attorneys for the defendants, Grace Housing Development Fund Co., Inc. ("Grace"), Jacob Underwood ("Underwood"), and Maria Evans ("Evans"), and I make this affidavit in opposition to the application for a preliminary injunction; in opposition to the application for a direction to allow the within action to be prosecuted as a class action, and in opposition to an application for an order to waive the security requirements of Rule 65(c) of the Federal Rules of Civil Procedure.

To begin with, the plaintiffs are not entitled to a preliminary injunction. A careful reading of the supporting affidavits reveals that the plaintiffs have not been denied due process in the granting to the defendant Grace of an increase in rent by the Department of Housing and Urban Development ("HUD").

The Defendant grace made application for an increase in rent because the project was running at a deficit. HUD requested and Grace supplied all of the relevant data to justify the increase. The application was made pursuant to regulations existing at the time and promulgated by HUD. These regulations made no provision for the tenants to examine the documentation and to oppose an application for an increase. Nevertheless, after approval of the increase by HUD, Grace notified all Tenants of the increase by letter in August, 1974, (see exhibit "1" annexed hereto). The increase was to take effect on October 1, 1974. The tenants then retained counsel who made demand upon HUD to examine the material and in fact, several meetings were held at the HUD offices without the owner being present. At these meetings the tenants and their attorneys examined the data submitted by the owner to HUD. Communication was exchanged (see exhibits "2" and "3"). The tenants submitted the documentation to their own accouting firm who stated that in its opinion, not enough information was submitted by the owner. Nevertheless, neither tenants or their counsel submitted any new evidence as to why the increase should not have been granted. Further, they took no legal action to test the validity of the increase. In fact, they allowed the effective date of the increase to pass (October 1st) and took no action at all until a summary proceeding was commenced in December, 1974 against one Ella Jones, based on the non-payment of the increase. Now, they suddenly find this great need to ask for a preliminary injunction. I submit that before they can succeed with this drastic provisional remedy,

they must face the fact that they have been guilty of laches. Due process was afforded to them; ample opportunity was given for all the challenges to the increase. It is manifestly unjust to force the owner into insolvency by this drastic remedy when they had all the time necessary to challenge the increase.

It is interesting that the plaintiff submits two affidavits of two tenants in support of the application. One application was signed by Elizabeth Boone. In her affidavit she attempts to justify the application by setting forth in essence that there are conditions which are "hazardous to life" existing in the premises, that the apartments are vermin infested, the roof leaks, etc. The fact of the matter is that her affidavit is dated December 3, 1974. On December 10, 1974, this same tenant voluntarily appeared at the office of the defendant Grace, and asked to, and in fact did, sign a lease which included the very increase being challenged! Annexed hereto is a copy of that lease marked Exhibit "4".

Another affidavit was signed by a tenant named Bennie Mason and I should like to deal with this affidavit on a point-by-point basis. Mr. Mason states that he has knowledge that "certain tenants" have been required to pay fees over and above their rent, for various services. Mr. Mason says that this is based upon his own knowledge, but yet he names no tenants. He further states that fees were charged for rental of apartments. This is vehemently denied by the defendant Grace. No fees are ever charged for transfers by tenants from one apartment to another. The only

charge that is made is for the painting of the new apartment. It must be borne in mind that this project is non-profit and only money actually expended is charged. Further, Mr. Mason states that fees are charged for parking spaces. This also is specifically denied. Parking spaces are free of charge. The affidavit also says that a charge is made for the use of the community room. The fact is, that when a tenant requests the use of the room for a private purpose the charge is ten dollars! This money is used to defer losses. The total received by the project for this service in the two-year life of the project is ninety ($90.00) dollars.

Other statements have been made that money has been received for the use of laundry machines. The fact is that the machines are run by a private company who pays $126.00 per month to the project. The company's name is Artan Laundry Corp., who incidentally has threatened to discontinue this served because of vandalism.

Other allegations have been made with regard to the fact that this project is under self management and that this was not reported to HUD. In fact the project was managed by a private company for a year at a charge of seven (7%) percent and then Grace applied to HUD for self-management which was approved by HUD who authorized a charge of four (4%) percent.

The point of the above refutations is to show to this Court that the allegations made by plaintiff and the alleged contrary evidence that would have been submitted to HUD are nothing more than based upon hearsay and are merely an attempt to

to pick at any straw to set aside the increase.

Plaintiff rests its claim for a premilinary injunction on the fact that "drastic and irreparable injury will result if it is not granted and that no harm will be suffered by defendants Grace as the result of such a stay. I submit that the exact opposite is true: The defendant Grace is on the verge of insolvency. If this preliminary injunction is granted, Grace will become unable to maintain this project. On the other hand, if the injunction is not granted, the tenants will suffer no irreparable injury. They can pay the increased rent, and if Grace is not successful in this case, the money can easily be refunded by a waiving of rent until such time as the increase is made up.

The allegations submitted by the plaintiff do not show a reasonable probability of success. In fact, it would seem that they will not be successful. Therefore, I submit that this drastic remedy of a preliminary injunction should not be granted.

Plaintiff also asks that this case proceed as a class action. It would seem that plaintiff cannot sustain this position. The fact is, that the tenants association does not adequately represent all the tenants and cannot protect the rights of all the tenants. In fact, information has been received that this association only represents about thirty (30%) percent of all the tenants, that most tenants have refused to join and further that most tenants are not in sympathy with its goals or this suit. In addition, the attorney for the association is East New York Legal Services, Brooklyn Legal Services Corp. "A" which by law can only represent persons of a certain maximum income level. There are conceedely thenants in this project whose incomes exceed the

authoritative level of the attorney's authority. Therefore, should Grace be successful in this law suit, it is entirely conceivable that thos tenants not able to be so represented can then obtain private counsel and start the r own law suits thereby subjecting Grace to a multiplicity of law suits on the very same issue and defeating the very purpose of a class action.

This Court is also being asked to waive the security requirement because plaintiff claims to represent indigent persons. In fact, many are far from indigent and Grace is entitled to be protected in its possible damages in a suit of this type.

WHEREFORE, defendants Grace, Underwood, and Evans respectfully request that an order be entered denying the plaintiff the right to proceed as a class action, denying the application for a preliminary injunction and requiring a Bond to be posted.

/s/
SHELDON OSTRO

Sworn to before me this
16th day of December, 1974.

JUDY BERKOWITZ
Notary Public, State of New York
No. 24-4511251
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1975

SPACE HOUSING DEVELOPMENT FUND CO., INC.
P.O. BOX 1, 342 STATE ST.
BROOKLYN, NEW YORK 11217
342-6115

AUGUST 27, 1974

Dear Tenant,

With the rising cost of operating and maintenance expense along with vandalism, we have been exceeding our budget for some time.

Therefore, we must regretfully announce that we are compelled to initiate a 23% rent increase which is effective October 1, 1974. (which has been approved by Housing & Urban Development.)

The rent rates will be as follows:

	Present	Oct. 1, 1974
1 BR.	170.00	209.10
2 BR.	230.00	282.90
3 BR.	230.00	282.90
4 BR.	260.00	319.80

All leases must be signed by September 30, 1974. Failure to do so will result in immediate termination of tenancy. You will be notified what date to sign lease.

If any further questions call office on Tuesdays and Thursdays.

EXHIBIT "1"
75 (9)

Management

EXHIBIT "2"
75-(10)

BROOKLYN LEGAL SERVICES CORPORATION A
OFFICES SERVING BROWNSVILLE, BUSHWICK AND EAST NEW YORK

BROWNSVILLE LEGAL SERVICES
624 STONE AVENUE
BROOKLYN, NEW YORK 11212
PHONE (212) 345-6200

EAST NEW YORK LEGAL SERVICES
803 PENNSYLVANIA AVENUE
BROOKLYN, NEW YORK 11207
PHONE (212) 385-4045

September 12, 1974

Mr. George Brown
Acting Director
Loan Management Division
U.S. Dept. of Housing and
Urban Development
666 Fifth Avenue
New York, New York 10019

Re: Proposed Grace Towers
Rent Increase

Dear Mr. Brown:

I appreciated the opportunity to meet with you on Tuesday, September 10, 1074, to discuss the proposed Grace Towers 23% rent increase.

I have advised our clients, the Grace Towers Tenants' Association, of the following understanding I believe we reached in the meeting.

1. It was agreed that your office would meet with representatives of the Association and their legal and accounting counsel to review all material submitted by the owner, Grace Housing Development Fund Co., Inc., in support of their application for a rent increase.

2. It was also agreed that your office would consider any material submitted by the tenants in opposition to the increase and that HUD would make a new determination with respect to the increase, if such material leads to a finding of unwarranted owner requests.

3. Finally, I understand that your office will give the tenants a letter stating HUD's eventual determination regarding the rent increases with your supporting reasons.

In the next few days, our office will present this agreement to the tenants for their consideration. Should they agree to the meeting, I will call your office to arrange a mutually convenient date.

Very truly yours,

EAST NEW YORK LEGAL SERVICES

JGOU ALLBRAY
Law Clerk

IA:IS

cc: Mr. Benning Mason
President, Grace Towers Tenant Assoc.
2060 Pitkin Avenue
Brooklyn, New York 11207

75(d)

EXHIBIT "3"
75-(c)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
REGIONAL INSURING OFFICE
175 FULTON AVENUE
HEMPSTEAD, NEW YORK 11550

REGION II
26 Federal Plaza
New York, N.Y. 10007

September 19, 1974

REPLY REFER TO:
Attn: (Brown)

Mr. Igou Allbray
B'klyn. Legal Services Corp. "A"
503 Pennsylvania Avenue
Brooklyn, New York, 11207

Dear Sir:

Subject: Ref's. to your letter 9/12/74 - Grace Towers.

Your letter does not quite set forth our position which perhaps you mis-understood.

We will make available to the Association and/or their representatives, all material submitted by the Mortgagor in substantiation of their request for increased rentals, also a photocopy of letter dated 8/1/74 approving the present rentals.

Again if you have any knowledge of the submission of untruth or inaccuracies in the submitted material, we would appreciate your advise and evidence thereof.

Sincerely,

Alfonse P. Lia

for Ioon Weinberg
Acting Director
Housing Management Division

75(f)

October 1969

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

MODEL FORM OF LEASE

(for use under Section 221(d)(3) Below Market Interest Rate cases for Tenants not receiving rent supplement payments)

FHA PROJECT NO. 012-55201 NP

This Agreement made and entered into this 10th day of December, 19 74, between Grace Housing Development Fund Co., Inc., as LANDLORD, and Elizabeth Boone, as TENANT.

WITNESSETH:

WHEREAS, the LANDLORD is the Mortgagor on a mortgage covering the project in which the hereinafter described dwelling unit is situate, which mortgage is insured under Section 221(d)(3) of the National Housing Act, as amended, and which mortgage bears interest at the below market rate provided for under Section 221(d)(5) of said Act; and

WHEREAS, the LANDLORD has entered into a Regulatory Agreement with the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner (hereinafter called Commissioner) which provides that admission to the project shall be limited to families having a low or moderate income which does not exceed the limits established by the Commissioner and in effect at the time of admission; and,

WHEREAS, pursuant to said Regulatory Agreement, LANDLORD has agreed (1) to obtain a certification of TENANT'S income prior to admission to the project and a recertification of income at least every two years following admission to the project and (2) if any recertification discloses that TENANT'S income exceeds the limits established by the Commissioner and in effect at the time of said recertification, LANDLORD shall either terminate the lease or require the TENANT to pay an increased rental in accordance with the formula prescribed by the Commissioner.

NOW THEREFORE,

1. The LANDLORD leases to the TENANT and TENANT leases from the LANDLORD dwelling unit 2H in the project known as Grace Towers for the term commencing on the 1st day of Oct., 19 74 and ending on 30th day of Sept., 19 75 at a monthly rental of $ 282.90, subject to adjustment as hereinafter provided.

2. The monthly rental, stipulated herein, shall include all utilities, approved by the Commissioner, which shall in no event include telephone. LANDLORD covenants and agrees to furnish to the TENANT at reasonable times and in reasonable amounts all such utilities.

3. Said rent shall be payable monthly in advance on or before the first calendar day of each month at P.O. Box J, ERY STATION to LANDLORD or to such other person or persons as the LANDLORD from time to time by written notice designates.

4. Unless terminated as provided herein, this lease shall be automatically renewed for successive terms of one month each at the aforesaid rental, subject to adjustment as herein provided, payable in advance without demand on the first day of each month. Either party may terminate this lease at the end of the initial term or any successive term, giving 30 days written notice in advance to the other party.

5. TENANT agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of his tenancy with respect to the amount of rental he will be obligated to pay and his right of occupancy.

6. TENANT agrees that a recertification of family income shall be made to the LANDLORD on a form prescribed by the Commissioner at least every two years from the date of this lease; provided, however, that in any event, TENANT shall recertify his family income upon the execution of any subsequent lease of the aforesaid dwelling unit.

7. TENANT agrees that if any recertification discloses his family income exceeds the limitations established by the Commissioner and in effect at the time of recertification, then LANDLORD shall have the option of either (a) giving the TENANT 30 days written notice to quit and deliver up possession of the premises whereupon this lease shall terminate or (b) increasing the TENANT'S rental to an amount computed in accordance with the formula prescribed by the Commissioner. If the TENANT'S rental is increased in accordance with this paragraph, LANDLORD shall give TENANT 30 days notice of the increased rental by an addendum to be made part of this lease stating the new amount the TENANT will be required to pay.

8. Without the prior written approval of the LANDLORD, the TENANT shall not assign this lease, sublet the dwelling unit, give accommodation to any roomers or lodgers or permit the use of the dwelling unit for any purpose other than as a private dwelling solely for the TENANT and his immediate family.

9. TENANT agrees to pay to the LANDLORD any rental which should have been paid but for (a) TENANT'S misrepresentation in his initial income certification or recertification, or in any other information furnished to the LANDLORD, or (b) TENANT'S failure to supply income recertifications when required or to supply information requested by the LANDLORD.

10. TENANT for himself and his heirs, executors and administrators agrees as follows:

(a) to pay the rent herein stated promptly when due, without any deductions whatsoever, and without any obligation on the part of the LANDLORD to make any demand for the same;

(b) to keep the dwelling unit in a clean and sanitary condition, and to comply with all the laws, health and policy requirements with respect to said dwelling unit and appurtenances, and to save the LANDLORD harmless from all fines, penalties and costs for violations or noncompliances by TENANT with any of said laws, requirements, or regulations, and from all liability arising out of any such violations or noncompliance;

(c) not to use the dwelling unit, or any part of the project, for any purpose deemed hazardous by insurance companies carrying insurance thereon;

(d) that if any damage to the dwelling unit shall be caused by his acts or neglect, the TENANT shall forthwith repair such damage at his own expense, and should the TENANT fail or refuse to make such repairs within a reasonable time after the occurrence of such damage, the LANDLORD may, at his option, make such repairs and charge the cost thereof to the TENANT, and the TENANT shall thereupon reimburse the LANDLORD for the total cost of damages so caused;

(e) to permit the LANDLORD, or his agents, or persons authorized by him, or any representative of any holder of a mortgage on the project, to enter the dwelling unit at reasonable times for the purpose of making inspections and repairs and replacements; to permit the LANDLORD to show the dwelling unit to prospective tenants during the last thirty days of the term of this Lease;

(f) not to install a washing machine, dryer, air conditioning unit, or any other electrical equipment in the dwelling unit without the prior approval of the LANDLORD;

(g) to have no animals or pets of any kind on the project, other than those expressly permitted in writing by the LANDLORD;

(h) to permit the LANDLORD or his agents to bring any appropriate legal action in the event of a breach or threatened breach by the TENANT of any of the covenants or provisions of this Lease.

11. The TENANT, by the execution of this Lease, admits that the dwelling unit described herein has been inspected by him and meets with his approval. The TENANT acknowledges hereby that said dwelling unit has been satisfactorily completed, and that the LANDLORD will not be required to repaint, replaster, or otherwise perform any other work, labor, or service which it has already performed for the TENANT. The TENANT admits that the dwelling unit is in a tenantable condition, and agrees, at the expiration or prior termination of the Lease, to deliver up and surrender said

dwelling unit to the LANDLORD in as good condition as when received, reasonable wear and tear excepted.

12. No alteration, addition, or improvements shall be made in or to the dwelling unit without the prior consent of the LANDLORD in writing.

13. TENANT agrees not to waste utilities furnished by the LANDLORD; not to use utilities or equipment for improper or unauthorized purpose; and not to place fixtures, signs, or fences in or about the dwelling unit without prior permission of the LANDLORD in writing. If such permission is obtained, TENANT agrees, upon termination of the Lease, to remove any fixtures, signs or fences, at the option of the LANDLORD, without damage to the dwelling unit.

14. The LANDLORD shall maintain the project in good repair and the dwelling unit in tenantable condition, except in case of damage arising from the acts or neglect of the TENANT, or his agents.

15. TENANT hereby makes a deposit of one months's rental against any damage except reasonable wear done to the dwelling unit by the TENANT, his family, guests, or agents, and agrees to pay when billed the full amount of such damage in order that the deposit will remain intact. Upon termination of this Lease, the deposit is to be refunded to the TENANT or to be applied to pay such damage or any rent delinquency.

16. TENANT further agrees that if he should fail to pay the rent herein stipulated promptly when due, or should fail to comply with any and all other provisions of this Lease, then it shall be lawful for the LANDLORD, at his election or option, to re-enter and take possession of the dwelling unit, the TENANT hereby expressly waiving any and all notices to vacate said dwelling unit, and thereupon this Lease shall terminate, without prejudice, however, of the right of the LANDLORD to recover from the TENANT all rent due up to the time of such re-entry.

75 (2)

17. This Lease shall be subordinate in respect to any mortgage that is now on or that hereafter may be placed against said project, and the recording of any mortgage shall have preference and precedence and be superior and prior in lien to this Lease, irrespective of the date of recording and the TENANT agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this Lease to any mortgage, and a refusal to execute such instrument shall entitle the LANDLORD, or the LANDLORD'S assigns and legal representatives to the option of cancelling this Lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

18. Failure of the LANDLORD to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the LANDLORD'S right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

19. In return for the TENANT'S continued fulfillment of the terms and conditions of this Lease, the LANDLORD covenants that the TENANT may at all times while this lease remains in effect, have and enjoy for his sole use and benefit the dwelling unit hereinabove described.

WITNESS:

Grace Housing Development Fund Co., Inc.

_____ LANDLORD

_____ By: _____

_____ _____ TENANT

Husband

_____ _____

Wife

75 (1)

Exhibit "4"

1. The public halls, stairways, elevators and vestibules shall not be obstructed by any person or used for children's play, loitering or for any other purpose than for ingress to and agress from the apartments; nor shall any person be permitted to loiter, or play in front of the buildings on the grass or planted areas, in carriage rooms, or any place other than the playgrounds provided for the purpose.

2. Elevators shall be operated only by adults and no children unattended is permitted in the elevators.

3. Tenants shall not make or permit any disturbing noises in the building or elsewhere in the project by themselves, their visitor or Tenant's family nor do or permit anything to be done by such persons that will interfer with the rights, comforts, safety, or convenience of other tenants. Tenants shall not play upon, or permit to played upon, any musical instrument, or operate or permit to be operated a record player, radio or television set in the demised permises or elsewhere in the development in such manner or such time as may disturb or annoy tenants or other occupants.

4. Neither tenants, their visitor, nor Tenant's family shall sweep shake, hang, or throw anything out of the windows or doors, or into the halls, stairways, or elevators of the buildings, or the obstruc

the window sills in any way.

5. No baby carriages, or bicycles or other like paraphernalia shal be allowed to remain in the halls, passageways, areas, or courts of the buildings, bicycle ridings is prohibited in the project. No garbage can, Kitchen supplies, or other articles shall be placed or left in the halls, landing or stairways.

6. Tenants shall not tamper with mail boxes, elevators, stand pi fire hoses, outside hose connection, doors, locks, heat connections refrigerators, gas stoves, or any other fixtures or equipments of landlord in or near buildings in which the demised premises are located. Water closets, basins, and other plumbing fixtures shall not be used for any purpose other than those for which they were designed, n shall any sweepings, rubbish, rages or any other

improper articles be thrown in the same. The cost of damage resulting from tampering with or misuse of any of the facilities shall be paid by Tenants.

7. No sign, signal, illumination, Television or radio aerial, or other equipment shall be installed or exposed on or at any window or any other part of the building. Installation of aerial wires on any part of the building is expressly forbidden.

8. Tenants shall not install or use in the demised premises any air conditioning unit, clothes dryer (gas or electric), deep-freeze unit dish-washer, clothes washing machine, mangle, or other pressin machine, garbage-disposel unit, radio transmitter, diathermy machine electric refrigerator (other than the one supplied by landlord), or any appliance which interferes with radio or television reception.

9. No shades, awnings, or venetian blinds shall be installed or used except such as shall have installed or approved by Landlord.

10. No dogs, cats, or other animals shall be kept or harbored in the demised premises, nor shall they be brought on the premises by visitors even though such animal may not interfere substantially with the comfort or safety of the Landlord or other Tenants; the intention being that the mere presence of the animal shall con-

stitute a violation.

11. The use of compactors shall be in accordance with the signs attached thereto and only garbage and refuse wrapped in small, tight parcels may be placed in the compactor hoppers.

12. Any alteration, or replacements to or upon any door is forbidden.

13. Any r[illegible]ing of exposed wires for electrical appliances or fixtures is in violation of the law and is prohibited.

14. No furniture or other unauthorized articles may be store in the storage rooms.

15. Tenants shall not require, permit, suffer, or allow any windows in the demised premises to be cleared from the outside in violation of Section 202 of the New York State Labor Law, or any present or future law covering same.

with and employee of the Landlord.

18. Tenants are required to take every precaution to prevent fire

19. Tenants shall abide by all regulations pertaining to the moving in of furniture in order to provide the proper vermin contro and to pay the cost of fumigation or extermination.

20. Tenants are to notify Landlord immediately of any birth or death or other change in Tenant's family.

21. Whenever a change occurs in the size or composition of the Tenant's family, if and when require by the Landlord Tenant shall move to a dwelling unit of appropriate size prescribed by the Landlord in the same building or any other building in the project.

22. Landlord grants this lease to Tenant in accordance with article 11 of this Lease, and in consideration of Tenant's promise to comply with all of the foregoing Rules and Regulations, any additional Rules and Regulations adopted install in the future, the breach of anyone will constitute a violation of a substantial obligation of one's tenancy of this Lease, and subject Tenant to eviction.

23. Tenant shall purchase and install air-conditioners in their own apartment. An additional charge for electricty will be prorate on a 12 month basis.

24. Tenant shall not at anytime allow members of there family or visitors to enter upon roof of building.

25. No Barbecuing is allowed on grounds and areas surrounding building.

26. Tenants must get written permission from the managing agent and be assigned to a space in the parking area. Unlawful parkers will be towed at the owner's risk.

27. Tenants may not make Automobile repairs in parking area all unauthorized vehicles placed in parking areas shall be towed from the parking area at the expense of tenant and without any liabilit to the Landlord.

28. The cost of damage of misuse of any of the facilities shall be paid by tenants. Landlord reserves the right to change maintence charges.

29. Landlord reserves the right to change any of the foregoing Rules and Regulations, and may further adopt additional Rules and Regulations in the future.

RECEIPT AND REPRESENTATION: The undersigned hereby acknowledges receipt of a copy of the foregoing Lease, Rent Supplement Rider and Rules and Regulation for GRACE HOUSING DEVELOPMENT FUND CO., INC., the LANDLORD. It is further acknowledged BY the undersigned that the said Rules and Regulations were read before the signing of this receipt and that no oral representations have been made by the Landlord.

_____

Edith Rivera

In the presence of:

Maria Ewart

Date 10-10-74

75 (o)

GRACE TOWERS:

SCHEDULE OF MAINTENANCE REPAIRS

Tenants will pay the actual charges when the services listed, resulting from tampering or misuse of equipment of facilities are rendered by Landlord. All charges will be billed on monthly rent notices and shall constitute additional rent.

1. Replace Broken Windows
2. Install New Door Lock and Cylinders
3. Clearing and/or Replacing of Clogged Sinks and Toilets
4. Replacing Mail Box Lock and Key
5. Lock-Out
6. Replace Electric Switch
7. Replace Wall Outlets
8. Replacement of Refrigeration Ice Tray
9. Towing and abandoned Automobiles from Parking Area
10. Replacement of Refrigerator Door Gasket
11. Replacement of Window Blinds

The above list is only a partial identification and the tenant shall pay, as additional rent, any repair costs for damages to the apartment caused by the tenant.

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 74C 1714

GRACE TOWERS TENANTS ASS'N., an unincorporated association; and BENNIE MASON, individually and as President of Grace Towers Tenants Ass'n and ELIZABETH BOONE, individually and as Secretary of Grace Towers Tenants Ass'n. and all in behalf of all others similarly situated, Plaintiff

v.

GRACE HOUSING DEVELOPMENT FUND CO. INC; JACOB UNDERWOOD, individually and as President GRACE HDFC, INC.; MARIA EVANS individually and as Managing Agent of GRACE HDFC, Inc.; and JAMES T. LYNN, as Secretary of the United States Department of Housing & Urban Development Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

THOMAS N. ROTHSCHILD, ESQ.

plaintiff's attorney , whose address

EAST NEW YORK LEGAL SERVICES
503 PENNSYLVANIA AVE.
BROOKLYN NY. 11207
TELEPHONE 385.4045

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Clerk of Court.

Deputy Clerk.

Date: DEC 6, 1974

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

RECEIVED
U.S. ATTORNEY'S
DEC 19 12 32 PM '74
EAST. DIST. N.Y.

MARSHAL'S FEES

Travel ..... $ .....

Service ....

.....
United States Marshal.

By .....
Deputy United States Marshal.

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

74C 1:14

No. .....

United States District Court
FOR THE
EASTERN DISTRICT OF NEW YORK

GRACE TOWERS TENANTS ASSN. et al,

Plaintiffs

v.

GRACE HOUSING DEVELOPMENT FUND CO, INC. et al,

Defendants

SUMMONS IN CIVIL ACTION

Returnable not later than 60 days after service.

THOMAS N ROTHSCHILD, ESQ.
EAST NEW YORK LEGAL SERVICES
503 PENNSYLVANIA AVE.
BROOKLYN N.Y.
TELEPHONE # 385-4045

.....
Attorney for Plaintiff

FPI MI—5-27-71 300,000 6368

124

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

GRACE TOWERS TENANTS ASSOCIATION, et al.,

Plaintiffs,

- against -

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.,

Defendants.

- X

Civil Action
No. 74 C 1714

FEDERAL DEFENDANT'S MEMORANDUM OF LAW

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

LEWIS F. TESSER
Assistant U. S. Attorney
(Of Counsel)

STATEMENT OF FACTS

The United States adopts as its own, for the purposes of this Memorandum, the Statement of Facts submitted by Defendants, Grace Housing Development Fund in its Memorandum of Law, with the additional facts that the Department of Housing and Urban Development (HUD) repeatedly advised the plaintiffs of their ability to submit matters in opposition to the rent increase and of the willingness of HUD to reconsider the rent increase if evidence were submitted that would justify such a reconsideration.

STATEMENT OF ISSUES

A. ~~FHA~~ HUD's approval of the rent increase is not subject to judicial review.

B. Plaintiffs cannot assert a failure of due process.

C. Due Process was afforded the plaintiffs.

A. HUD FHA's approval of the rent increase is not subject to judicial review.

The plaintiffs have alleged that HUD's approval of the rent increase was based on insufficient evidence. (POINT II, PLAINTIFF'S MEMORANDUM OF LAW). It is clear, however, that FHA's action is not subject to judicial review.

In Langevin v. Chenango Court, Inc., 447 F.2d 296 (2nd Cir. 1971), the Second Circuit was confronted with this precise issue. They held that the provisions of 5 U.S.C. §701(a) precluded judicial review because Congressional intent was discernible to make FHA's action unreviewable. The Court stated that:

> a mere claim of error, even of gross error, is not enough to escape the second exception in 5 U.S.C. §701(a). And, whatever bounds the due process clause may set upon non-reviewability of agency action, [citations omitted] no cases goes to the extent of holding that due process mandates judicial review of an order approving - on the basis of an ex parte submission of facts - a rent increase to a landlord who has benefited from a federal aid program. Ibid, 303-304.

B. Plaintiffs cannot assert a failure of due process.

Plaintiffs claim that they were not afforded due process by ~~FHA~~ HUD when it determined that a rent increase was justified.

However, plaintiffs are not entitled to due process in the context of ~~FHA~~ HUD's determination. Langevin v. Chenango Court, Inc., supra.

In Langevin, supra., tenants in a federally assisted housing project for low and moderate income families sought to set aside certain rent increases approved by the Federal Housing Authority. The plaintiffs had requested, and been refused a hearing to contest the rent increase and they then claimed that the refusal had constituted a denial of due process. The court dismissed the complaint and after finding Congressional intent to promote "'the construction of housing by private enterprise'", explained why it was dismissing the complaint.

> The due process clause does not forbid Congress from deciding, if it wishes, that federal assistance to "private industry in providing housing for low and moderate income families and displaced families" in the form of insurance and purchase of low interest mortgages need not be conditioned on the granting of an evidentiary hearing with respect to rent increases, but, in the absence of some governmental scheme of rent control, whether general or particularized, may instead be confined to the decision of the experienced staff of the FHA, which has been instructed

> to subject rent increase applications to thorough investigation to the end that tenants should not be imposed upon. The complementary objectives of Congress, admittedly constitutional and laudable, were to encourage private enterprise to undertake the construction of housing for low and moderate income and displaced families, thereby dispensing with the use of governmental funds for equity investment, and to see that an appropriate share of the benefits of the federal assistance went to the tenants.

In order to distinguish Langevin, supra., plaintiffs cite Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2nd Cir. 1973). In that case, the Court modified an Order of the District Court which had granted plaintiffs an adversary hearing. The review court stated that

> Although we hold that due process requires certain procedural safeguards before an across-the-board rent increase can be imposed by a municipal housing authority, we do not agree that a formal adversary hearing with attendant procedures is necessary. Ibid, 1166. Emphasis added.

In other words, the Burr, supra., court recognized that a requirement of some due process was necessary in situations "in which the landlord is a governmental body." Ibid, 1169. In fact, Langevin, supra., cited by Burr, supra., when it enunciated the above quoted doctrine, had already made the same distinction.

The determinative factor in the due process contention, the Langevin, supra., Court stated, was that in Langevin, supra.,

"the Government did not itself increase the rents but simply allowed the landlord to institute an increase upon the termination of existing tenancies, as the landlord would have been legally free to do but for its regulatory agreement with the FHA." Langevin v. Chenango Court., Inc., supra. In the instant case, unlike Burr, supra., the landlord is not "a public corporation, organized under New York State law." (Burr v. New Rochelle Municipal Housing Authority, supra.

Thus, the present action falls under the principles of Langevin, supra.

C. Due Process Was Afforded the Plaintiffs

Assuming arguendo, that plaintiffs were entitled to due process protection, it is clear that they were afforded due process.

In Langevin v. Chenango Court, Inc., supra., the landlord informed the tenants of FHA approved rent increases of 15% to 18% that were to be effective upon the expiration of existing leases.

> Many tenants failed to pay. At a meeting with regional FHA officials they sought all information submitted by Chenango or developed by the FHA relevant to the rent increases. They also sought an opportunity to present opposing material. The FHA officials declined, and Chenango rejected a tenant proposal to escrow the amounts of rent increases pending an opportunity to be heard. Ibid, at p. 299.

The tenants instituted suit and claimed that the approval of the increases had violated the Due Process Clause

of the Fifth Amendment. After the Court stated its findings that FHA had not denied plaintiffs due process, it discussed, at pp. 301-302, a procedure that the FHA might require (absent countervailing considerations) of landlords seeking rent increases. The Court mentioned items such as notice, making data available to tenants, allowing tenants to submit short written submissions and a statement of reasons for granting approval to the rental increase. Such a procedure, the Court said, would aid both the FHA and the tenants. The Court then stated that "even such a procedure, however desirable, was not mandated by any relevant statute or by the due process clause of the Fifth Amendment." Langevin, supra. p. 302.

In Langevin, supra, the FHA officials refused to allow the tenants the information submitted by the landlord relevant to the rent increased. In the instant case, not only was rent increase information given to the tenants, but, in fact, copies of all papers submitted to justify the increase were given to the plaintiffs (Plaintiffs Exhibit B, letter of Leon Weinberg).

In Langevin, supra., the FHA officials refused to allow the tenants to present opposing material. In the instant case, not only were the tenants allowed to present opposing material, but they were repeatedly requested for such material. (Plaintiffs Exhibit 6, letter of Leon Weinberg).

In Langevin, supra., the landlord rejected a tenant's proposal to escrow the amounts of rent increases pending an opportunity to be heard. In the instant case, at a compromise discussion, the tenants refused to accept such a proposal after all attorneys for all parties had agreed that an escrow arrangement would be fair for everyone.

If the tenants were not denied due process in Langevin, supra., it would certainly be anomalous to conclude that tenants in this action have been denied due process.

CONCLUSION

It is respectfully submitted, therefore, that all relief sought by the plaintiffs should be denied.

Dated: Brooklyn, New York
January 8, 1975

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

LEWIS F. TESSER
Assistant United States Attorney
(Of Counsel)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

GRACE TOWERS TENANTS ASSOCIATION, et al.,

Plaintiffs,

-against-

No. 74 C 1714

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.,

January 15,1975

Defendants.

- x

Appearances:

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Plaintiffs
IGOU M. ALIBRAY, ESQ.
Of Counsel

GREENER & OSTRO, ESQS.
Attorneys for Defendants
SHELDON OSTRO, ESQ.
Of Counsel

DAVID G. TRAGER, ESQ.
United States Attorney
Eastern District of New York
LEWIS F. TESSER, ESQ.
Assistant U. S. Attorney
Of Counsel

BRUCHHAUSEN, D. J.

This is a class action, instituted by and on

behalf of tenants and their tenant association against the owner, Grace Housing Development Fund Co. Inc. The owner is a non-profit housing corporation whose purpose is to provide housing accommodations to low income families. The defendant is federally subsidized and insured, pursuant to Section 221(d)(3) of the National Housing Act, 12 U.S.C. 1715 1(a), and receives rent supplementation on behalf of 10% of the tenants, pursuant to 12 U.S.C.1701(s).

The plaintiffs seek a preliminary injunction, enjoining the owner from increasing their rents and restraining all eviction actions, pending in the appropriate State courts until the trial of this action is concluded.

The hearing on the preliminary injunction was heard on January 9, 1975. At this hearing proof established that the housing project was constructed with substantial local and federal funds thereby subject to their rules and regulations, including among other things, rental increases. The landlord thereupon applied to the Housing of Urban Development (HUD) for an increase of the rentals because the project was running at a deficit. The landlord, at the request of HUD, supplied all necessary information, relevant to justify the increase. The

regulations did not require tenant participation on the proposed rent increases. The federal agency acted upon the proposal of the landlord and granted a 23% rent increase, effective October 1, 1974. A letter to this effect was mailed on August 27, 1974 by the landlord to each tenant, residing in the project. A letter, dated September 12, 1974, was then mailed to HUD on behalf of the tenants, indicating that as a result of a meeting, held on September 10, 1974, certain understandings were reached between HUD and the representative of the tenants, Igou M. Allbray, Esq., Pltf's Ex. 2. A letter, dated September 19, 1974, mailed to Igou M. Allbray, Esq. from HUD clarified its position and agreed to make available all material, submitted by the landlord to substantiate its position for this rental increase. Pltf's Ex. 3. The tenants were given an opportunity to submit evidence, indicating that the position of the landlord was inaccurate or untrue. A second meeting was held on September 20, 1974, at which time the submitted material by the landlord for the increase was made available to the tenants, however, nothing was submitted by them indicating

any inaccuracies or untruths therein.

It was agreed, prior to the hearing, that the Court must first determine whether or not the tenants were deprived of due process by not being present prior and during the determination by HUD for this rent increase and, secondly, whether or not the federal agency's determination is subject to judicial review.

In Langevin v. Chenango Court, Inc., 447 F.2d 296(1971)(Cir. 2) the Court held in part at pages 303-304:

> "***We hold only that a mere claim of error, even of gross error, is not enough to escape the second exception in 5 U.S.C. § 701(a). And, whatever bounds the due process clause may set upon nonreviewability of agency action, see 4 Davis, Administrative Law Treatise §§ 28.18 and 28.19; Jaffe, Judicial Control of Administrative Action 381-89 (1965), no case goes to the extent of holding that due process mandates judicial review of an order approving - on the basis of an ex parte submission of facts - a rent increase to a landlord who has benefited from a federal aid program."

Furthermore, the federal agency in this case scheduled and held two separate meetings with the plaintiffs, subsequent to the granting of the rent increase.

It exhibited to the tenants copies of all documents submitted by the landlord for the proposed increase, and invited information, if any, to be submitted by them to disprove the position of the owner. The tenants failed to submit any such information, requested by the federal agency.

During the hearing, counsel for the tenants urged that the Langevin case, supra, has been weakened or overruled by Lopez v. Henry Phipps Plaza South, Inc., 498 F.2d 937. However, that case is clearly distinguishable. The Court held in part at page 942:

> "***We therefore hold that Phipps was subject to the same due process requirements with respect to eviction that apply to a municipal housing authority. We do not here go beyond tenant eviction and selection, which we have already considered in Male; we leave open what, if anything, due process requires with respect to rent increases in a project such as this. Compare Hahn v. Gottlieb, 430 F.2d 1243, 1246-1249 (1 Cir. 1970); Langevin v. Chenango Court, Inc., 447 F.2d 296 (2 Cir. 1971)."

The Court, after reviewing the evidence together with the applicable law, concludes that the plaintiffs were not denied due process and secondly, that the

determination of the federal agency is not subject to judicial review. Langevin v. Chenango Court, Inc., supra.

It follows, therefore, that the motion for a preliminary injunction is denied and the complaint is dismissed on the merits.

It is so ordered.

Copies hereof are being forwarded to the attorneys for the parties.

Walter Bruchhausen
Senior U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACE TOWERS TENANTS ASSOCIATION, et al.,

Plaintiffs,

- against -

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.,

Defendants.

JUDGMENT

74 C 1714

A memorandum and order of the Honorable Walter Bruchhausen, Senior United States District Judge, having been filed on January 15, 1975, the court having concluded that the plaintiffs were not denied due process and secondly, that the determination of the federal agency is not subject to judicial review and therefore denying the motion for a preliminary injunction and dismissing the complaint, it is

ORDERED and ADJUDGED that the motion for a preliminary injunction is denied and the complaint is dismissed on the merits.

Dated: Brooklyn, New York
January 16, 1975

Clerk

BY: Chief Deputy Clerk

(8)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

NOTICE OF APPEAL

Notice is hereby given that GRACE TOWERS TENANTS ASS'N., etc., et al., plaintiffs in the above action, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 30th day of January, 1975.

/s/

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Plaintiffs
East New York Legal Services
503 Pennsylvania Avenue
Brooklyn, New York 11207

Dated: 1/27/75

Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

NOTICE OF MOTION

Notice is hereby given that the attached motion will come on for a hearing before this Court at 10 o'clock in the forenoon ~~January~~ February 6, 1975, under the provisions of 28 U.S.C. 1915, FRAP Rule 24.

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Appellant
East New York Legal Services
503 Pennsylvania Avenue
Brooklyn, New York 11207
Tel: 385-4045

Dated: January 27, 1975
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS AND FOR TRANSCRIPT TO BE FURNISHED AT THE EXPENSE OF THE UNITED STATES

Plaintiffs GRACE TOWERS TENANTS ASS'N., etc., et al., moves the Court for an order permitting them to prosecute an appeal from the judgment entered herein on the 15th day of January, 1975, in forma pauperis, pursuant to 28 U.S.C. 1915 and in support thereof attach the affidavit of said appellants.

Plaintiffs further move the Court for an order that all proceedings at the trial herein be transcribed at the expense of the United States on grounds that plaintiffs are unable to pay for said transcripts as set out in the aforementioned affidavit and that said proceedings at the trial herein are material to the substantial questions presented on said appeal.

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Plaintiffs
East New York Legal Services
503 Pennsylvania Avenue
Brooklyn, New York 11207
Tel: 385-4045

Dated: January 27, 1975
Brooklyn, New York

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS AND FOR TRANSCRIPT

I. BENNIE MASON, being duly sworn, deposes and say that I am a tenant of Grace Towers, residing at 2060 Pitkin Avenue, Brooklyn, New York and president of the Grace Towers Tenants' Association and a named plaintiff in the above titled class action; that in support of plaintiffs' motion to proceed on appeal without being required to prepay fees, costs or give security therefor or pay for a transcript of the proceedings, I state that neither I personally, the tenants' association, nor a majority of the members of the tenant class personally are able to pay the costs of said proceeding or to give security therefor; that I believe plaintiffs are entitled to redress; and that the issues which plaintiffs desire to present on appeal are the following:

1. that the tenants of Grace Towers, the Association and I were denied our rights to due process with respect to a rent increase requested by defendants Grace HDFC, Underwood and Evans and approved by defendant Lynn, as Secretary of HUD.

2. That plaintiffs are entitled to judicial review of HUD's determination granting the increase.

I further swear that the statements set forth below relating to my and other plaintiffs' ability to pay the cost of prosecuting the appeal and paying for the transcript are true.

1. I am presently unemployed.

2. My sole source of income is New York State unemployment benefits amounting to $95.00 per week.

3. My former employer went out of business in December of 1974 and I have been receiving unemployment benefits since December 21, 1974.

4. Prior to the termination of my employment, I was earning $150.00 per week.

5. I am the sole support of my family, consisting of myself and my wife, a housewife.

6. Both my wife and I have considerable medical expenses; as to myself these arise from a severe injury to the leg.

7. My wife and I have no other source of income but unemployment benefits.

8. My wife and I have no other valuable assets or own real or personal property other than necessary houshold items, clothing and an automobile, valued at $300.00 which I will need in the event that I obtain employment.

9. ELIZABETH BOONE, a tenant and secretary of Grace Towers Tenants' Ass'n., the other named plaintiff, is a recipient of public assistance and is without any property or assets other

than necessary household items and clothing.

10. The Grace Towers Tenants Association has assets of less than $75.00.

Bennie Mason
BENNIE MASON

SWORN TO BEFORE ME

THIS 24th day of January, 1975

Inocencia Quiñones
Notary Public

INOCENCIA QUIÑONES
Notary Public State of New York
No. 24-4504973
Qualified in Kings County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

ORDER GRANTING LEAVE TO PROSECUTE APPEAL IN FORMA PAUPERIS AND FOR A TRANSCRIPT TO BE FURNISHED AT THE EXPENSE OF THE UNITED STATES

This cause having been heard on motion of plaintiffs GRACE TOWERS TENANTS ASS'N., etc. et al that they be authorized to prosecute an appeal from the judgment entered herein on the 15th day of January, 1975, in forma pauperis, said motion being supported by affidavits of the said plaintiffs that they are unable to pay the costs of said appeal or give security therefor;

It being further moved by plaintiffs that the proceedings at the trial herein be transcribed at the expense of the United States;

And it appearing to the Court that the motions should be granted,

IT IS ORDERED that the appellants GRACE TOWERS TENANTS ASS'N. etc., et al. be and are hereby permitted to prosecute said appeal in forma pauperis, and

It is further ORDERED that the proceedings at the trial herein be transcribed and furnished plaintiffs at the expense of the United States.

The appeal is non-frivilous.

WALTER BRUCHHAUSEN
United States District Judge

Dated: ~~January~~ February 6, 1975.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74C 1714

CIVIL ACTION NO.

74 C

ORDER TO SHOW CAUSE

AND TEMPORARY RESTRAINING ORDER

Upon the summons and complaint herein and upon the affidavits attached hereto, it is

ORDERED, that the defendants or their attorneys show cause at a motion term of this court to be held in Court Room 5 in the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 18 day of December, 1974, at 10 A.M. or as soon thereafter as counsel may be heard, why Plaintiffs herein should not be granted the following relief:

1. An order pursuant to Rule 23 of the Federal Rules of Civil Procedure, directing that the within action be prosecuted as a class action, the class consisting of all residential tenants of Grace Towers who are or may be subject to rent increases on October 1, 1974.

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2. An order pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining, pending the final judgment herein, defendants Grace HDFC, Jacob Underwood and Maria Evans, their agents, and all persons in active concert with them, from increasing or attempting to increase the rent of any plaintiff over and above the monthly rental in effect September 1, 1974, and from commencing or prosecuting summary or other proceedings against any plaintiff in state court based in whole or in part upon any such increase, on the grounds that such increase, in the circumstances herein, constitutes a denial to plaintiffs of due process of law and is not warranted by the application to FHA, and unless such relief is granted, plaintiffs may be evicted by summary proceedings, resulting in irreparable injury to them and mooting of their claims, as to all of which plaintiffs have no adequate remedy at law.

3. An order pursuant to 28 U.S.C. §1915 waiving the security requirement of Rule 65(c) of the Federal Rules of Civil Procedure, on the grounds that plaintiffs are persons of low and moderate income, many dependent in whole or in part upon public assistance and all without substantial assets, who therefore are unable to post security herein.

4. For such other and further relief as to the Court may see just.

IT IS FURTHER ORDERED, pursuant to Rule 65 of the Federal Rules of Civil Procedure, that defendants Grace HDFC, Jacob Underwood & Maria Evans, their agents and all persons in active concert with them are temporary enjoined, pending the hearing for a preliminary injunction, from increasing or attempting to increase the rent of any plaintiff or member of the proposed plaintiff class over and above the monthly rental in effect September 1, 19[illegible] and from commencing or prosecuting summary or other proceedings against any plaintiff in state court based in whole or in part upon any such increase, on the grounds that such increase, in the circumstances herein, constitutes a denial to plaintiffs of due process of law and is not warranted by the application to FHA, and unless such relief is granted, plaintiffs may be evicted by summary proceedings, resulting in irreparable injury to them and mooting of their claims, as to all of which plaintiffs have no adequate remedy at law.

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. §1915 that plaintiffs are not required to post security as required by Rule 65(c) of the Federal Rules of Civil Procedure, on the grounds that plaintiffs are persons of low and moderate income, many dependant in whole or part upon public assistance and all without substantial assets, who therefore are unable to post security herein.

IT IS FURTHER ORDERED, that service of this order and the affidavits and papers upon which it is based be made on

the defendants Grace Housing Development Fund Co., Inc., Jacob Underwood, and Maria Evans, and upon the United States Attorney for the Eastern District of New York, on or before the day of December, 1974, at or before 4:30 in the afternoon of that day. Service may be made by the attorneys for plaintiff.

At the United States Courthouse
Cadman Plaza East
Brooklyn, New York

On this day of December, 1974

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

GRACE TOWERS TENANTS ASSOCIATION
et al.,

AFFIDAVIT

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO.,
INC., et al,

Defendants.
----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

THOMAS N. ROTHSCHILD, being duly sworn, deposes and says:

1. I am the attorney for plaintiffs herein and make this affidavit in support of an application for a preliminary injunction.

2. This action is brought for declaratory and injunctive relief against certain actions by defendants which deny plaintiffs due process of law as set forth by the Court of Appeals in Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973) and other cases. The practices include application for a 13% rent increase applicable to plaintiffs and those they represent by defendants Grace HDFC, Underwood and Evans and approval of same by defendant Lynn as Secretary of HUD without notice to plaintiffs and without opportunity to review and submit material in opposition and without a determination by HUD based on plaintiffs' and defendants' submissions.

3. Defendant Grace HDFC owns and operates Grace Towers,

a low and moderate income housing project wherein plaintiffs reside. In acquiring, constructing and operating this project, located in an urban renewal area, Grace HDFC is carrying out a state purpose, with extensive state and local subsidies, and in accordance with broad agreements with and restrictions by local government, as more fully set forth in paragraphs "10" through "17" of the complaint and Exhibits 1 and 2 thereto. All of this, we believe, demonstrates that the activities of Grace HDFC constitute "state action".

4. The mortgage on Grace HDFC is also subsidized and insured by the Federal Housing Administration pursuant to Section 221(d)(3) of the National Housing Act, and as a consequence thereof Grace HDFC entered into a Regulatory Agreement with the Commissioner of FHA, as described in Paragraphs "18" and "19" of the complaint and Exhibit 3 thereto. By this agreement, Grace HDFC is required to use a form of lease prescribed by the Commissioner.

5. Defendants Grace HDFC and Evans have commenced summary proceedings based on non-payment of rent against named plaintiff Mason, and against other members of the proposed plaintiff class, based upon the 23% rent increase approved by HUD, effective October 1, 1974.

6. At least one of these proceedings is currently pending in the Housing Part of the Civil Court of the City of New York, County of Kings. The attorney for Defendants (petitioners in State Court) has informed me that he has allowed other proceedings to lapse because of dissatisfaction with the pleadings, but intends to recommence them at the earliest possible time.

7. Prior to obtaining an increase of plaintiffs' rents plaintiffs were entitled to written notice of defendant Grace HDFC's application to HUD for the increase, to an opportunity to review material sent in support of the application, an opportunity to submit material in opposition to the increase, and a HUD determination in writing based on all this material.

8. None of these rights were afforded to plaintiffs by defendants.

9. All of the foregoing is set forth clearly and in more detail in the affidavits of plaintiffs Mason and Boone in support of this application.

10. Plaintiffs believe this action is appropriate for adjudication as a class action, as more clearly set forth in paragraphs "21" through "23" of the verified complaint and Point II of the Memorandum of Law in support of this application. The plaintiff class would consist of all tenants of Grace Towers who are or may be subject to the same sorts of arbitrary action against them by defendants as against named plaintiffs.

11. We believe that the class fulfills all the requirements of Rules 23, F.R.C.P. as alleged in the complaint and argued in our Memorandum.

12. We are requesting a class determination at this early stage, together with a preliminary injunction, to protect all members of the plaintiff class as well as named plaintiffs, pending trial, from danger of eviction due to arbitrary action by defendants as a result of plaintiffs declining to sign new leases in the amount of 23% increase or for declining to pay the

increases. We have been informed that other members of the class are now or have been subject to arbitrary actions by defendants as complained of herein, and that at least three persons, other than named plaintiffs, are presently subject to eviction for non-payment of rent. Plaintiffs and class members are subject to the same irreparable injury in the absence of a preliminary injunction, as alleged in the complaint and the affidavits of plaintiffs Mason and Boone.

13. Plaintiffs seek a preliminary injunction on behalf of themselves and those they represent in order to stay the summary proceedings for non-payment of rent, as set forth in paragraphs "5" and "6" of this affidavit, because of the drastic nature of the judgments which may otherwise be entered against them as set forth herein, resulting in their eviction from their homes. Since defendants Grace HDFC, Underwood and Evans have generally twenty (20) days to answer the complaint and the U.S. Attorney has sixty (60) days to answer for defendant Lynn, Secretary of HUD, plaintiffs need a preliminary injunction to maintain the status quo until this case can be heard on the merits. Therefore plaintiffs seek an order to show cause based on affidavits and served with the complaint.

14. Additionally, plaintiffs seek a temporary restraining order to prevent defendants from obtaining judgments of eviction before this motion can be heard. Deponent has been informed by the attorney for these defendants that he intends to prosecute the proceedings as rapidly as possible and is unwilling to adjourn them pending the hearing of this motion.

A restraining order is therefore required to prevent the irreparable injury which might otherwise result.

15. As set forth in the affidavits of Bennie Mason and Elizabeth Boone, plaintiffs ask that requirements for a bond be waived in that plaintiffs and members of plaintiff class are persons of lower income without substantial assets, who would be severely harmed by such requirement, while defendants risk no irreparable financial loss if the application is granted.

16. Plaintiffs have no remedy at law.

17. No prior application has been made for the relief sought herein or any similar relief to any court or judge thereof.

18. I have notified by telephone Sheldon Ostro, Esq., the attorney for defendants Grace HDFC, Underwood and Evans, of my intention to make this application on Friday, December 6, 1974, and he has informed me he intends to appear. I have also spoken by telephone to Cyril Hyman, Esq., Deputy Chief of the Civil Division, United States Attorney's Office for this District , and informed him of my intention to make this application.

WHEREFORE, deponent respectfully requests that the action be ordered to proceed as a class action, that a preliminary injunction be issued, pending trial of the action, enjoining and restraining defendants from all actions in state court to evict plaintiffs or increase their rent without adequate due process rights and waiving requirement for a bond, and that a temporary restraining order against state proceedings issue pending hearing of the motion, the court grant leave to plaintiffs' attorneys to serve the order and the affidavits and papers on which it is based on the

defendants Grace HDFC, Underwood and Evans and upon the U.S. attorney for the Eastern District of New York as sufficient service.

Thomas N. Rothschild

THOMAS N. ROTHSCHILD

Sworn to before me
this 5TH day of DECEMBER, 1974

Dana M. Mingo

Notary Public

DANA M. MINGO
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

GRACE TOWERS TENANTS' ASSOCIATION, et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., et al.,

Defendants

----------X

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

BENNIE MASON, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the within action, and make this affidavit in support of the application for a preliminary injunction.

2. Together with all the named plaintiffs and all members of the plaintiff class, I reside in Grace Towers, a low and moderate income development, with 168 residential units in two buildings located at 272 Pennsylvania Avenue, and 2060 Pitkin Avenue, Brooklyn, N.Y., I reside at 2060 Pitkin Avenue, and am president of plaintiff Grace Towers Tenants' Association.

3. Grace Towers is owned and operated by defendant Grace HDFC, defendant Jacob Underwood is its president and chairman of its board, and defendant Maria Evans is its managing agent.

4. On or after August 27, 1974, I and each member of the Plaintiffs' class received a copy of a letter advising me that my rent would be increased 23%. In my case this meant a change from $170.00 to $209.10 per month. This was the first notice of any kind received by Plaintiffs and members of the Plaintiffs class

regarding any rent increase or application therefor.

5. Neither I nor any plaintiff or class member was given any notice of defendants' Grace HDFC, Underwood or Evans application to FHA for the increase prior to its approval, nor were we given any opportunity to review material sent to FHA used to support the application nor to submit material to FHA in opposition to the application; nor did we ever receive a written determination on this application from FHA.

6. Thereafter, and on Friday, September 20, 1974, a delegation of Grace Towers Tenants' Association including myself met with George Brown, the Acting Director of Loan Management of FHA, a constituent agency of HUD. The meeting was held at FHA offices at 666 - 5th Avenue, N.Y.C. At this meeting Mr. Brown agreed to supply the Association and its legal counsel and accounting consultants with all materials submitted by Grace HDFC in application for the rent increase. See Exhibits 3,5 and 6 to the complaint.

7. I believe that due to the nature of Grace Towers and Grace HDFC, as set forth in the complaint and exhibits, and the affidavit of my attorney, Thomas N. Rothschild, Esq., I and other plaintiffs and class members are entitled to those procedural due process rights set forth above in Paragraph 5 and in the complaint.

8. Certain tenants, members of the Plaintiffs' class, have to my knowledge been required to pay fees, over and above their rent, for various services. These include:

a) Rental of apartments in Grace Towers.
b) Transfers by tenants of Grace Towers from one apartment to another within the project.
c) Parking spaces in the project lot.
d) Use of the community room located in one of the buildings.

e) Certain repairs made in the project resulting from damage allegedly the fault of a tenant.

9. Because I only know some of the 167 tenants of Grace Towers, I do not know the full extant of these charges, but on information and belief, imposition of these charges is a frequent if not general practice of Defendants Underwood and Evans, the principals of Defendants Grace HDFC, and has resulted in considerable income.

10. On information and belief, Grace HDFC receives income from coin-operated laundry facilities located in the project.

11. On information and belief, none of the above income was ever reported to FHA by the other Defendants, nor does a perusal of the increase application materials ultimately supplied to us by FHA (Exhibit 6 to Complaint) reveal a report of such income.

12. As set forth in Paragraphs 10-12 of the affidavit of Elizabeth Boone submitted in support of this application. Defendants Grace HDFC, Underwood and Evans are not providing services contracted for in the lease.

13. As set forth in Paragraphs 13 and 14 of the affidavitof Elizabeth Boone submitted in support of this application Grace Towers is upon information and belief being managed by members of the Board of directors of Grace HDFC and members of the board are employees of the operation managing Grace Towers.

14. On September 26, 1974, defendant Evans called me to her office at 2060 Pitkin Avenue and asked that I sign a new lease with an increase of the rental costs from $170.00 to $209.10 per month. I declined to sign the new lease.

15. On or after October 1, 1974, I received a copy of a notice of petition and petition in a summary proceeding for possession, alleging non-payment of rent, based upon the increased rental of $209.10 per month, in spite of the violations of my rights involved in obtaining that increase, as set forth in this action. The proceeding is entitled Grace Housing Development Fund Co., et al., v. Bennie Mason, et al., Civil Court of the City of New York, County of Kings, Index No. L&T 66211 of 1974. This proceeding is currently pending.

16. On information and belief, at least two members of the plaintiff class, other than named plaintiffs, have received such papers.

17. Certain of the "non-payment" cases were dismissed in the Housing Division of Civil Court, Kings County through inadvertence and will have to be restored to calendar. Unless a stay of all non-payment proceedings is granted, plaintiffs may be faced with an order of possession against us and in favor of defendants which would result in eviction from our homes of ourselves, our families and our possessions.

18. Because of the drastic and irreparable injury we face, a preliminary injunction is sought, pending the trial and final determination of this action. A determination as to class status is also sought. No harm will be suffered by defendants as a result of such a stay of the 23% rent increase or of the non-payment proceedings.

19. All of the named plaintiffs are persons of low income; most are recipients of public assistance. I personally earn $160.00 per week as a brake operator ($8320.00 per annum) and care for myself and my wife. In addition, my wife and I have extensive medical bills arising from our poor health. We do not receive medicaid. Should I be required to pay more than the $170.00 rental I will be unable to go to the doctor. I own no assets other than personal clothing and household furnishings of no substantial value.

20. Defendants risk no irreparable financial loss if this application is granted as compared to the great injury I, and other plaintiffs would suffer if it is denied. For this reason I ask that the requirement of a bond be waived.

WHEREFORE, PLAINTIFF respectfully requests that an order be entered allowing this action to proceed as a class action, and the application for a preliminary injunction be granted as prayed for without requirement of a bond together with such other and further relief as may be just, proper and equitable.

Sworn to before me this
27th day of November, 1974

Bennie Mason
Bennie Mason

Notary Public
THOMAS N. ROTHSCHILD
Notary Public, State of New York
No. 24-4526073
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS' ASSOCIATION, et al.,

Plaintiffs,

AFFIDAVIT

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., et al.,

Defendants.

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

ELIZABETH BOONE, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the within action and make this affidavit in support of the application for a preliminary injunction.

2. Together with all the named plaintiffs and all members of the plaintiff class, I reside in Grace Towers, a low and moderate income development, with 167 residential units in two buildings located at 272 Pennsylvania Avenue and 2060 Pitkin Avenue Brooklyn, New York. I reside at 2060 Pitkin Avenue, Apt. 2M and am Secretary of plaintiff Grace Towers Tenants Association.

3. Grace Towers is owned and operated by defendant Grace HDFC, and defendant Jacob Underwood is its President and Chairman of its board.

4. On or after August 27, 1974, I received a copy of a letter advising me that my rent would be increased 23% from $230.00 per month to $282.90 per month effective October 1, 1974,

and that the U.S. Department of Housing and Urban Development (HUD) had approved the increase.

5. Neither I nor any plaintiff or class member was given any notice of defendants' Grace HDFC, Underwood or Evans application to FHA for the increase prior to its approval, nor were we given any opportunity to review material sent to FHA used to support the application, nor to submit material to FHA in opposition to the application; nor did we ever receive a written determination on this application from FHA.

6. On Friday, September 20, 1974, a delegation of Grace Towers Tenants Association including myself, met with George Brown, FHA's Acting Director of Loan Management in HUD's offices at 666 Fifth Avenue, New York City. At this meeting Mr. Brown agreed to supply the Association and its legal and accounting consultants with all materials submitted by Grace HDFC in application for the rent increase. See Exhibit 5 attached to the complaint.

7. On Monday, September 23, 1974, I picked up these materials from HUD's employee, David Buchwalter at 666 Fifth Avenue, New York City. See Exhibit 6 attached to the complaint.

8. I believe that due to the nature of Grace Towers and Grace HDFC, as set forth in the complaint and exhibits, and the affidavit of my attorney, Thomas N. Rothschild, Esq., I and other plaintiffs are entitled to those procedural due process rights set forth in paragraph 5 above and in the complaint.

9. On September 27, 1974, defendant Evans called me to her office at 2060 Pitkin Avenue, and asked that I sign a new lease

with an increase of the rental costs from $230.00 to $280.90 per month. I declined to sign the new lease.

10. As claimed in paragraph 36 of the complaint defendants Grace HDFC, Underwood and Evans in violation of statute, regulation and their obligations under the lease failed to provide services to tenants, members of plaintiffs class in that inter alia:

a) Electrical wiring is generally defective throughout the project, is hazardous to life and unable to support normal electrical usage and affects all tenants.

b) Apartments are generally vermin infested.

c) Roof leaks cause damage to the apartments of th ose tenants living on the upper floors.

d) Heat is inadequate on upper floors of the project, so that some tenants, members of plaintiffs class receive insufficient heat.

e) Elevators are frequently non-functional, affecting all tenants on upper floors.

f) Security measures and guards services promised to all tenants as inducements to rent and upon which tenants relied have not been provided.

g) Security gates on first floor windows promised to tenants on the first floor have not been provided in violation of promises.

h) A designated play area has been converted into a parking lot in violation of promises to all tenants as an inducement to rent.

11. Since I know only some of the 167 tenants of Grace Towers, I do not know the full extent of Grace's breaches of promises to tenants but upon information and belief, I believe these breaches are numerous.

12. Upon information and belief, none of the above breaches of leases were ever reported to FHA by the other defendants. Nor was this information included in the increase application materials supplied to plaintiffs by FHA (Exhibit 6 to the complaint).

13. Upon information and belief defendant Grace HDFC is directly managing the project and may be charging a management fee, resulting in an illegal profit. In addition, defendant Jacob Underwood, president of Grace HDFC, is also upon information and belief, head of the management operation, which may be a conflict of interest. Further, two members of the Board of Directors of Grace HDFC hold positions within the project. These are Major Cunningham, Superintendant and Clifton Quick, a maintenance man. See staff list included in the Grace HDFC application material annexed to the complaint as Exhibit 6. Any salary or compensation received by them could be in violation of law.

14. Because I know only a few of the board of directors of Grace HDFC, I do not know the full extent of any conflict of interest between board and management. In addition, however, Underwood is pastor of Grace Baptist Church at 233 New Jersey Avenue, Brooklyn, New York, and Quick and Cunningham are deacons of this church.

15. As set forth in paragraphs "8" - "11" of the affidavit of Bennie Mason submitted in support of this application, defendants Grace HDFC, Underwood and Evans failed to report to HUD all incomes and fees received in their application for the rent increase in violation of statute and regulation.

16. Because of the drastic and irreparable injury plaintiffs face, a preliminary injunction is sought, pending the trial and final determination of this action. A determination as to class status is also sought.

17. All of the named plaintiffs are persons of low income, most are recipients of public assistance. I personally receive public assistance of $244.00 semi-monthly from the Human Resources Administration, my sole source of income. With this I must pay my rent of $230.00 per month. ($2,760 per annum) and care for myself and my children, Bruce 10, Angela 7 and Ray Sean 3. I own no assets other than personal clothing and household furnishings of no substantial value. Defendants risk no irreparable financial loss if this application is granted, compared to the great injury I and other plaintiffs would suffer if it is denied. For this reason I ask that the requirement of a bond be waived.

WHEREFORE defendant respectfully requests that an order be entered allowing this action to proceed as a class action, and

the application for a preliminary injunction be granted as prayed for without requirement of a bond together with such other and further relief as may be just, proper and equitable.

Elizabeth Boone
ELIZABETH BOONE

SWORN TO BEFORE ME

this 3rd day of December 1974

Notary Public

INOCENCIA QUIÑONES
Notary Public, State of New York
No. 21-4504978
Qualified in Kings County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N, etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

AFFIDAVIT OF SERVICE

74 C 1714

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

THOMAS N. ROTHSCHILD, being duly sworn deposes and says that he, attorney for plaintiffs in the above entitled action, served personally, by leave of Court, the summons, complaint, proposed order to show cause and memorandum of law upon Sheldon Ostro, attorney for defendants Grace HDFC, Underwood and Evans at 225 Cadman Plaza East Brooklyn, ~~his office at One Penn Plaza, New York~~, New York on December 6 1974, said attorney being authorized by said defendants to accept process on their behalf.

/s/

THOMAS N. ROTHSCHILD

SWORN to Before me

this 2 6 day of January 1975

NOTARY PUBLIC

[illegible] New York
No. [illegible]
Qualified in Kings County
Commission Expires March 30, 197[illegible]

121

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc., et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

AFFIDAVIT OF SERVICE

74 C 1714

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

IGOU M. ALLBRAY, being duly sworn, deposes and says that he served with the permission of the Court the summons, complaint, proposed order to show cause and memorandum of law upon James T. Lynn, Secretary of HUD, a defendant herein, by delivering a set of the above pleadings to the U.S. Attorney for the Eastern District of New York at his office at 225 Cadman Plaza East, Brooklyn, New York on December 19, 1974 and by depositing a set of the above pleadings in the U.S. mails, certified mail, to the Attorney General, Office of the Deputy Attorney General, Department of Justice, Washington, D.C. on December 20, 1974.

IGOU M. ALLBRAY

SWORN to Before me

this _____ day of January 1975

RICHARD N. ROTHCHILD
Notary Public, State of New York
No. 24-4529073
Qualified in Kings County
Commission Expires March 30, 1976

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

GRACE TOWERS TENANTS ASS'N., etc. et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc., et al.,

Defendants.

----------X

74 Civ. 1714

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

IGOU M. ALLBRAY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and works at 503 Pennsylvania Ave., Brooklyn, New York. That on the 7th day of February, 1975, deponent served the within ORDER GRANTING LEAVE TO PROSECUTE APPEAL IN FORMA PAUPERIS AND FOR A TRANSCRIPT TO BE FURNISHED AT THE EXPENSE OF THE UNITED STATES upon Sheldon Ostro of Greener & Ostro, attorney for defendants in this action, at 1 Penn Plaza, New York, N. Y. 10001, the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in-a post office- official depository under the exclusive care and custody of the United States post office department within the State of New York.

SWORN to before me this

7th day of February, 1975

THOMAS N. ROTHSCHILD
Notary Public, State of New York
No. 24-4526073
Qualified in Kings County
Commission Expires March 30, 1975

Notary Public

IGOU M. ALLBRAY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

GRACE TOWERS TENANTS ASSOCIATION, BENNIE MASON, ELIZABETH BOONE,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO., INC., JACOB UNDERWOOD, MARIA EVANS, JAMES T. LYNN, Secretary of H.U.D.,

Defendants.

74 C 1714

----------x

United States Courthouse
Brooklyn, New York

11:00 a.m.
December 18, 1974

B e f o r e :

HONORABLE WALTER BRUCHHAUSEN, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Plaintiffs
503 Pennsylvania Avenue
Brooklyn, New York 11217

SHELDON OSTRO, ESQ.
Attorney for Defendants
No. 1 Pennsylvania Plaza
New York, New York

Also Present:

LOUIS TESSLER, ESQ.
Attorney for the United States of America

IGOU M. ALLBRAY

- - -

MR. OSTRO: It is hereby stipulated and agreed by and between the attorneys for the respective parties --

MR. ROTHSCHILD: That the tenants shall continue to pay rents at the rate they were paying prior to October 1 of this year. All rents in arrears and current rents to be paid by Friday, December 27th.

MR. OSTRO: And that if said rent is paid on that date, as per this stipulation, in that event, and on that condition, that a trial of this matter will be held on January 9, 1975, or as soon thereafter as practicable, on the issues of this case.

MR. ROTHSCHILD: What about the class, we are proceeding as a class action, I assume?

MR. OSTRO: Except for this one thing, I want to raise this one issue that I am concerned about.

THE COURT: Off the record.

(Discussion off the record.)

MR. ROTHSCHILD: It is further stipulated and agreed that the action may proceed as a class action and counsel for plaintiff shall notify each tenant by regular mail of the pendency of the action in a form approved by the Court.

MR. OSTRO: That is satisfactory to me.

THE COURT: Very well, gentlemen.

(Time noted: 11:10 a.m.)

* * *

12.9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACE TOWERS TENANTS' ASSOCIATION, et al.,

Plaintiffs,

-against-

GRACE HOUSING DEVELOPMENT FUND CO. INC., et al.,

Defendants

74 Civ 1714

NOTICE OF PENDENCY OF ACTION

TO ALL TENANTS OF GRACE TOWERS, 272 Pennsylvania Avenue, and 2060 Pitkin Avenue, Brooklyn, New York

NOTICE IS HEREBY GIVEN: that Grace Towers Tenants' Association et al., plaintiffs herein, filed suit on December 6, 1974, against Grace Housing Development Fund Co., Inc., et al, defendants herein, to set aside a 23% rent increase as granted in violation of tenants' rights pursuant to § 221(d)(3) of the National Housing Act and regulations thereunder.

Plaintiffs have filed the action on their own behalf and as a class action on behalf of all others similarly situated.

Plaintiffs allege in the complaint that the increase was applied for and granted in violation of plaintiffs' rights to be heard in opposition to it and that the Federal government's approval of the increase was based on inadequate information and otherwise

not in accordance with law.

On December 18, 1974, defendants answered the complaint, denying all plaintiffs' claims and stipulated with approval of the Court to this action's proceeding as a class action.

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Rule 23(c)(2) FRCP, that:

1. The Court will exclude you from the class if you reque request exclusion in writing on or before the 9th day of January, 1975. Persons who request exclusion will not be entitled to share in the benefits of the judgment if it is favorable to the plaintiffs, and will not be bound by the judgment rendered in this case if it is adverse to the plaintiffs. Requests for exclusion should be sent to the Clerk of the United States District Court, Eastern District of New York.

2. The final judgment entered in this case will include, and will be binding upon, all members of the class who do not request exclusion, whether or not the judgment is favorable to plaintiffs. It will apply to all whom the Court ultimately finds to be members of the class.

3. If you do not request exclusion, you may, if you desire, enter an appearance through counsel of your own choosing. The plaintiffs are represented by Thomas N. Rothschild, Esq. East New York Legal Services, 503 Pennsylvania Avenue, Brooklyn, New York. The defendants are represented by Greener and Ostro, Esqs. 1 Penn Plaza, New York, N.Y. and by Louis Tesser, Esq., Assistant United

States Attorney, 225 Cadman Plaza East, Brooklyn, New York. If you do not request exclusion, and you do not enter an appearance through counsel of your own choosing, the above-named counsel for plaintiff will represent your interests in this case.

DATED: BROOKLYN, NEW YORK
December 20, 1974

THOMAS N. ROTHSCHILD, ESQ.
Attorney for Plaintiff
East New York Legal Services
503 Pennsylvania Avenue
Brooklyn, New York 11207
385-4045

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

GRACE TOWERS TENANTS ASSN. :

Plaintiff, :

against : 74 C 1714

GRACE TOWERS HOUSING DEVELOPMENT FUND CO. et al. :

Defendants :

----------x

United States Courthouse
Brooklyn, New York

January 9, 1975
12:00 m.

B e f o r e

HONORABLE WALTER BRUCHHAUSEN,

U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

THOMAS ROTHSCHILD, Esq.
Attorney for Plaintiff

SHELDON OSTRO, Esq.
Attorney for Grace Towers
Housing Development Fund Co., et al

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: LEWIS TESSER, Esq.
Assistant U.S. Attorney

THE CLERK: Grace Towers Tenants Association versus Grace Towers Housing Development Fund Co. et al.

MR. ROTHSCHILD: Before we start on the trial, your Honor, we have been holding -- I don't think we have to go on the record yet.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: On the record.

We'll take a recess for a few moments.

(Recess)

THE COURT: You may proceed, gentlemen.

MR. ROTHSCHILD: Your Honor, there are two branches to this case. The first concerns the tenants' rights to due process where a landlord of a subsidized project asks for a rent increase. The regulations provide any rent increase must be approved by HUD.

THE COURT: By who?

MR. ROTHSCHILD: Housing and Urban Development before it can go into effect. We have asked for opportunity to oppose the application before HUD, prior to its approval and to have HUD make a decision based on the application, on any opposition that the tenants put before HUD, that is, the evidence before them.

New regulations now in effect would have required this, but those regulations were not in effect at the time the application was made.

There is no dispute at all insofar as I know, that no notice was provided to the tenants that an application was being made and that the tenants were not given any opportunity to submit testimony in opposition to the application prior to the approval of the increase by FHA.

This is an independent ground -- we're not going to present any evidence on this basically because it's not in dispute. The facts are not in dispute. If the Court decides the case on this basis, then the matter must go back to the FHA, the increase must be voided, the case must go back to the FHA and a new opportunity must be given to the tenants to oppose the application.

The question has been briefed by all the parties. Do you wish me to argue this question now?

THE COURT: Not if it's in the briefs, I'd say that.

MR. ROTHSCHILD: Very well, your Honor.

The second half of the question relates to judicial review of HUD's decision. We maintain

that the decision that was reached by the Government is not supported by the evidence that the Government had before it and there is a preliminary issue, I take it, as to whether or not we're entitled to that review.

You're taking the position we're not entitled to that.

MR. TESSER: Yes.

MR. ROTHSCHILD: Now, as to the sufficiency of the application, we're prepared to present evidence. I don't know whether we should present it at this point or whether you wish to decide as a preliminary matter whether we're entitled to the review.

THE COURT: That might be appropriate, I'd say that.

MR. ROTHSCHILD: If -- We believe we're entitled to a review of HUD's decision and we have approached that point and we have shown why we believe that there is a meritorious ground for reversing the determination. If the Court believes that we're not entitled to judicial review, then, of course, there would remain no issue of fact really to decide.

THE COURT: I would like to hear your adver-

sary on that point.

MR. TESSER: The plaintiff is correct, your Honor. There are two main issues presently before the Court. It is the defendants' position -- the Government's position -- and the position of Grace Housing that we're in a position now to move summarily to dismiss the entire complaint; however, as to one of the issues, the law is not that clear, so therefore we're willing to put in evidence in order to clear it up.

The first issue is that of due process. The Second Circuit has clearly said in the Chenango case that the plaintiffs are not entitled to due process; however, other circuits have said they are, and for that reason the Government is willing to go ahead at trial and show that even assuming arguendo they are entitled to due process, due process was afforded to the plaintiffs and that would be the issue at trial. We would show that they did receive due process.

The second issue which I will move summarily now, your Honor, is to strike the allegations of the complaint, No. 2 through 6. These allegations all go to the heart of contesting FHA -- HUD's approval of the rent increase. The law is

very clear and there have been no decisions to the contrary and no decisions cited by the plaintiffs in their briefs to the contrary that the decision of HUD is unreviewable. It is not subject to judicial review; therefore, at this point, your Honor, I would like to move to strike allegations 2 through 6 of the plaintiffs' complaint so that we may get down to the real issue at this trial and that is whether or not due process was afforded the plaintiffs.

MR. ROTHSCHILD: I would like to be heard in opposition to that application. I find myself somewhat at a disadvantage because I wasn't informed that they intended to make that application, although I did realize there was some question about that aspect of the case; but I was only served with their brief this morning.

I believe that in fact we're entitled to judicial review. I think that the tenants are intended beneficiaries of the Government's scheme which sets up the subsidized housing and the District of Columbia Circuit has so held in Marshal v. Lynn, 497 F.2d 643, and I think that as intended beneficiaries they are entitled to review, judicial review, of an action of the

Government which approves a rent increase that directly affects them and that they're aggrieved parties in that situation.

I would like to point out that although it is true that in Langevin v. Chenango, which the United States Attorney mentioned, they did say the tenants are not entitled to that review and in fact are not entitled to due process, the Second Circuit has recently backed off from that position and has pointed out in Lopez v. Henry Phipps Plaza South, also cited in your memorandum, that they consider the question of due process to which tenants are entitled in this type of project to be an open question. I would presume therefore the question of judicial review would also be an open question.

The Second Circuit has specifically decided that in cases of a housing authority, a public housing authority, the tenants are entitled to due process, so that it is basically the question centers on the status of a quasi public-private housing project such as the defendant here.

THE COURT: It's a question of law?

MR. ROTHSCHILD: That is a question of law, yes.

MR. TESSER: If I may, your Honor, in response to my motion, the plaintiff comes back with cases showing that the tenants may be allowed due process. That is exactly my point. Perhaps they are, and therefore even though the Government contends that they are not, we're willing to show that they were given due process, however none of the cases cited by plaintiff goes to the heart of the reviewability of HUD's decision, and the Second Circuit law is clear, black letter law. There has been no case in any district court, circuit court, in any state court, which says or implies to the contrary. I think if we are going to trial, your Honor, let's go to trial on the due process issue and not get into now a complete review of HUD's determination. That's already been done.

THE COURT: It's a question of law, isn't it?

MR. TESSER: About the reviewability, yes.

THE COURT: You don't need a trial on that.

MR. ROTHSCHILD: Not on the question of reviewability. Simply, if the Court finds as we believe, it is subject to review, then we would wish to present evidence --

THE COURT: You briefed this item, didn't you?

MR. TESSER: Yes.

MR. ROTHSCHILD: Both sides have briefed.

THE COURT: That's a matter for the Court to determine, then.

MR. TESSER: What we're talking about now, really, your Honor, is what's going to be admissible before the Court; the plaintiffs would like to bring in testimony to contradict HUD's determination.

THE COURT: Along the line of challenging judicial review?

MR. TESSER: Right. The Government contends no evidence of propriety of HUD's decision is admissible because the Courts have held it's just unreviewable.

THE COURT: That's my offhand view of it. I wouldn't decide it unless you have some other authorities to the contrary. We have these situations in one way or another. I don't like to decide off the bench, but it seems to be the controlling issue that's to be decided. I'd say that.

MR. TESSER: If it please the Court and my opposing party, I would suggest today we go to trial on the issue of due process while your Honor

has an opportunity to review the issue of reviewability. If your Honor feels --

THE COURT: Due process, I suppose, is intermingled with reviewability, isn't it?

MR. TESSER: No.

MR. ROTHSCHILD: Not in this instance.

THE COURT: Maybe not.

MR. TESSER: In other words, the plaintiffs have two allegations, first, they weren't given due process in order to contest the rent increase.

MR. ROTHSCHILD: That is to say due process before the administrative agency.

THE COURT: Any evidence that is appropriate, I'd say that.

MR. TESSER: We would like to go to trial on that issue. If you feel subsequently perhaps the case is reviewable, we can come back and if you find that the issue is unreviewable, we will have all presented evidence and it will be ripe for a decision.

THE COURT: I'll proceed with whatever matter you people agree upon. I'd say that.

MR. TESSER: Do you want to do that?

MR. ROTHSCHILD: That might be the simplest.

MR. OSTRO: I would certainly think so.

MR. ROTHSCHILD: It seems pointless to present evidence on the other issue if it's not going to be admissible in any case.

THE COURT: It's a question of law, isn't it, generally?

MR. ROTHSCHILD: Whether it's reviewable, yes, it's a question of law.

MR. TESSER: Yes.

THE COURT: I would think that is a matter to determine on the cases that I have mentioned here that are appropriate.

MR. ROTHSCHILD: Then we won't present any evidence on that point at this time.

THE COURT: I don't think so.

Let's start at 2:15, after lunch. Is that agreeable?

(Luncheon recess)

(Time noted: 1:00 p.m.)

AFTERNOON SESSION

(Time noted: 2:15 p.m.)

THE CLERK: Grace Towers versus Grace Towers Housing Development Fund Company, et al.

THE COURT: You may proceed.

MR. ROTHSCHILD: Thank you.

At this point, the only question of fact is as follows: There's no dispute that prior to the decision in August as to the increase the tenants were not given any notice or opportunity to be heard and if they were entitled to due process at that time, it was not granted. The only question of fact is whether the actions of the FHA thereafter were sufficient to meet the requirements of due process.

Is that a correct statement?

MR. OSTRO: Might I respond in this way: We're here to try a case. A case is tried by the presentation of evidence. I think the evidence will ascertain what took place and constant opening arguments I don't think are helpful. Counsel has made certain characterizations, presented the matter in a certain way that I do not necessarily agree with, such as not affording tenants due

process and things of this type. Let's present the case --

THE COURT: I would just suggest that those points could be mentioned after you present the evidence.

MR. ROTHSCHILD: I was not intending to present evidence as to what happened during the month of August or prior to the approval by FHA, because I understood those facts were not in dispute, there were no notices to the tenants. Do you agree?

MR. OSTRO: Are you asking for a stipulation that HUD granted an increase?

MR. ROTHSCHILD: Yes.

MR. OSTRO: And?

MR. ROTHSCHILD: And prior to the date HUD granted the increase, no notice was given to the tenants of a pending application.

MR. OSTRO: I don't know that because I'm representing management. Again, I'm not trying to belabor an issue, but I don't feel this is really a proper way to approach this trial. We have a trial.

MR. ROTHSCHILD: If you're not prepared to stipulate, then I'll present evidence on it.

THE COURT: I would say in repetition, you're entitled to present your proof and then you can present any legal points you want after that.

MR. ROTHSCHILD: All right.

At this time I would call Mr. Mason.

B E N N I E M O N R O E M A S O N, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name, please.

THE WITNESS: Bennie Monroe Mason.

DIRECT EXAMINATION

BY MR. ROTHSCHILD:

Q Mr. Mason, where do you live?

A I live at 2060 Pitkin Avenue, Brooklyn.

Q Is that in Grace Towers?

A Yes, in Grace Towers.

Q How long have you resided in Grace Towers?

A Two years and four months.

Q Are you familiar with the Tenants Association?

A Yes, I am. I'm the president of the Tenants Association.

Q How long has that association been in

existence?

A Well, I have been there two years and fourteen months(sic).

Q I'm sorry?

A Two years and four months. It was organized before that time.

Q How long have you been president?

A How long have I been president of the Tenants Association?

Q Yes.

A A year and four months.

Q Now, what was the first occasion on which you heard of any rent increase?

A Well, the first time I heard of any rent increase was the night that Reverend Underwood came to the tenants and held a meeting.

Q When was that?

A That was the last week in August.

Q To your knowledge, did any tenant receive notice prior to that that an increase was being sought?

A Nobody whatsoever.

MR. OSTRO: Your Honor, at this point -- I'm sorry, I was reading. I object to the form of the question. There has been no foundation

laid as to how Mr. Mason would have knowledge as to what tenants received notice from anyone.

THE COURT: That is, he testified as to hiw own knowledge what transpired.

MR. OSTRO: I would ask that the answer that no tenants received any knowledge be stricken and he can testify.

THE COURT: Granted.

Q During the month of September, did you have a meeting or were you present at a meeting with officials of FHA?

A I was.

MR. ROTHSCHILD: Excuse me. At this point I notice that there are some officials of FHA present. If they are going to testify, I ask they be excluded.

MR. OSTRO: Then I would ask, in all fairness, if there is going to be any witness called that we exclude all witnesses that are going to be called.

MR. ROTHSCHILD: All right.

MR. OSTRO: That you're going to call solely.

MR. ROTHSCHILD: I intend to call Mr. Allbray, who is a clerk in my office. Do you wish

him excluded?

MR. OSTRO: I'm sorry to say yes, I would.

THE COURT: What are you saying now?

MR. OSTRO: Yes, I would.

THE COURT: Anyone who is going to testify.

(Several witnesses leave the courtroom.)

MR. ROTHSCHILD: Also, if Mr. Ostro wishes to make a point whether any tenant received notice prior to this meeting at the end of August, then I will be glad to call every tenant in this room as a witness to that fact if no notice was given and --

THE COURT: You're entitled to call any witness you like.

MR. ROTHSCHILD: I'm just taken somewhat by surprise because when I spoke to Mr. Ostro before and to Mr. Tesser, they both said there had been no notice prior to the meeting with management at the end of August and that they weren't going to raise that question. I wasn't really expecting to present a great deal of evidence on it.

MR. OSTRO: You know, I was not trying to raise an objection that would make it difficult for counsel to prove a case. There's a witness

testifying and we're bound by rules of evidence. If you wish to stipulate and you wish a stipulation as to the fact that a notice was sent to the tenants on a particular day, that was mailed by Grace to the tenants, then I'll stipulate, but if you're questioning a witness then you have to question him under rules of evidence.

MR. ROTHSCHILD: That's what I ask, if you would so stipulate, there's no previous notice.

MR. OSTRO: I will stipulate that a letter was forwarded to the tenants, to each of the tenants, by Grace Housing Development Company, Inc.; and at this point if you so desire -- as a matter of fact, it might be helpful to introduce that letter, which is part of your exhibits, and read the letter, make it part of the record, and I will so stipulate if that's what you so desire.

MR. ROTHSCHILD: Will you also stipulate that there was no previous notice?

MR. OSTRO: From whom, sir?

MR. ROTHSCHILD: Let me put it this way. Will you stipulate there was no previous notice by Grace?

MR. OSTRO: No, I stipulated as far as I'm

going to stipulate. Please, I have stipulated that a letter was sent on a specific date, August 27th, I believe. We'll read the letter into the record. I think there the matter should lie and if you wish to prove your case, prove your case. I'll stipulate as to that letter.

MR. ROTHSCHILD: You will not stipulate there was no prior notice?

MR. OSTRO: That's a factual issue. We're at trial.

MR. ROTHSCHILD: I thought that was not an issue. That's what I'm asking you to stipulate to. I thought that was agreed.

MR. OSTRO: I'm puzzled, very puzzled. We're making a record. When we make a record on a trial, we have evidence. I'm stipulating that a letter was sent on August 27th, to each tenant in the development and I would like that letter real into evidence and I will so stipulate. Now, please don't put me on as a witness, and if you so wish to put me on as a witness, put me on as a witness.

MR. ROTHSCHILD: I'm asking you to make a stipulation on behalf --

THE COURT: As I gather, that's as far as he's going in admission as to the letter. Now, is the letter here?

MR. ROTHSCHILD: The letter is here.

MR. OSTRO: Might I say something? If the witness as president of the association says that he never got any prior letter, I don't think counsel is prejudicing his client, and if that is so, that is so. I think that should put the matter at rest. We're not arguing the motion, we're trying a case. If you wish to introduce the letter you can do so now.

THE COURT: Let's have the letter, Counsel.

Do you recall where that letter is?

MR. OSTRO: Yes, your Honor, I have a letter in front of me which is Exhibit 1 submitted by the plaintiff which I will be glad to stipulate was sent by Grace Housing Development Fund, which letter was dated August 27th, 1974.

MR. ROTHSCHILD: Exhibit what?

MR. OSTRO: Your exhibit, in your action, I believe.

In any event, the letter reads as follows: "Dear Tenant:" --

THE CLERK: Where is the letter?

MR. OSTRO: I have a copy. That's all I have got.

THE CLERK: Where is the original?

THE COURT: You may read it if you care to.

MR. OSTRO: I'm trying to accommodate counsel. "Dear Tenant:" The letter is dated August 27, 1974. "Dear Tenant:

"With the rising cost of operating and maintenance expenses, along with vandalism, we have been exceeding our budget for some time, therefore we must regretfully announce that we're compelled to initiate a twenty-three percent rent increase which is effective October 1, 1974, which has been approved by Housing and Urban Development. The rent rates will be as follows:

"One bedroom, October 1st, 1974, $209;

"Two bedroom, present, 200, October 1st, 1974" -- I'm sorry -- $232;

"Three bedroom, present $230, October 1st to"-- I have a bad copy. I can't read the increase.

"Four bedroom, present $260, October 1st" -- October 1st is illegible.

"All leases must be signed by September 30th 1974. Failure to do so will result in immediate termination of tenancy.

"You will be notified what date to sign the lease. If any further questions, call office on Tuesday or Thursday."

It's typed, the word "management."

That's the letter I will stipulate was sent on October 27th by Grace Housing.

MR. ROTHSCHILD: August 27th.

MR. OSTRO: Dated August 27th, 1974.

I might say it would have been preferable if the letter was introduced into evidence, that was received by one of the tenants, but this is the best I can do under the circumstances, sir.

MR. ROTHSCHILD: I'm sorry, I thought I had the letter here. I don't see it at the moment.

MR. OSTRO: Very well.

DIRECT EXAMINATION (CONTINUED)

BY MR. ROTHSCHILD:

Q Mr. Mason, during September or on September 20th of 1974, were you present at a meeting with officials of FHA?

A I was.

Q And approximately how many persons were present?

A I think it was about five or six people were there.

Q Who was present from FHA?

A Well, the only one that I knew was Mr. Brown.

Q And was there a discussion of the rent increase?

A Yes, it was.

Q Can you tell us, did Mr. Brown state the position of FHA?

A Yes, he did.

Q What was that position?

A Well, at this meeting what we did with Mr. Brown, he brought out evidence that the increase --

MR. OSTRO: I'm going to object to this line of testimony. If he wishes to testify as to what Mr. Brown said, that's fine, but not what Mr. Brown did or what he brought up.

Let him testify what Mr. Brown said. I believe that's the proper way to introduce what took place at a meeting.

THE COURT: All right.

MR. ROTHSCHILD: Certainly.

Q Tell us what Mr. Brown said.

A Mr. Brown said to the tenant that was at this meeting, he said, "I'll show you what the increase was granted on."

Q Did he then show you some documents?

A He did.

Q Are those the same documents that are attached to the complaint as Exhibit 6?

A It is.

Q Did he subsequently provide the tenants with copies of those documents?

A He did.

MR. ROTHSCHILD: I would move they be accepted into evidence.

Do you have any objection?

MR. OSTRO: They are part --

MR. ROTHSCHILD: They are exhibits.

MR. OSTRO: Which? Exhibit 6?

MR. ROTHSCHILD: Exhibit 6, the document.

MR. OSTRO: I have no objection.

MR. ROTHSCHILD: They will be deemed marked, I take it?

Q What else did Mr. Brown say?

A Then he said, Well, if we could prove there

was any fraud entered into the documents and you get evidence and bring it back to him, there's a possibility the increase wouldn't be granted.

Q Would be? That the increase would be granted?

A Wouldn't be.

Q Would not be granted?

A Right.

Q Did he say anything further?

A Yes, and he said, "This is what the Government has decided on as of the increase and there's nothing that the tenants can do about it."

MR. ROTHSCHILD: Thank you. No further questions.

CROSS EXAMINATION

BY MR. OSTRO:

Q Mr. Mason, you heard me read a letter into evidence, did you not, from Grace Housing?

A I did.

Q Did you receive that letter?

A Yes, I did.

Q When did you receive the letter?

A After the meeting with management of the increase.

Q I'm sorry? Say that again.

A After management came to the tenants to remind them of a 23 percent increase the next week that I got the letter stating that.

Q What did you do after you got the letter with respect to the increase?

A As the president of the Tenants Association, I decided we would get the tenants together and we would have a discussion and we would have -- get us an attorney and have him look into the matter. The cost of the increase was more than we could afford.

Q What did you do?

A Well, we got together and we went to Legal Aid.

Q When was this, sir?

A This was about two or three weeks after the meeting.

Q When was the meeting that you had with management?

A The meeting we had with management was in August. It was before the 27th. It was before the 27th of August, because that's when I got the letter.

Q So before the 27th of August you got together with the other tenants as president of the Tenants Associa-

tion and decided to get yourselves an attorney?

A That's right.

Q Would you know if this was, say, the last week in August, the middle of August? Do you have any idea?

A No, this was in September when we decided to get the lawyer.

Q When in September did you decide?

A Well, I don't know the exact date, but it was about a week or two after we had to file notice of the increase.

Q Was it before September 12th?

A Yes, it was before September 12th.

Q What did you do with respect to getting a lawyer?

A I just told you. We went to Legal Aid.

Q That was Mr. Rothschild?

A That was Mr. Rothschild.

Q Did you do anything with respect to the Department of Housing and Urban Development when you were notified of the increase?

A I don't understand what you mean.

Q Did you do anything other than get a lawyer with regard to the increase?

A No.

Q Did you call anybody at Housing and Urban Development?

A No.

Q Did you send a letter to anybody at Housing and Urban Development protesting the increase?

A Nobody but Mr. Brown.

Q You sent him a letter?

A We had the lawyer to make an appointment for us, to see Mr. Brown about the increase.

Q You told Mr. Rothschild, is that what you're telling me?

A Right.

Q To contact Mr. Brown?

A Right.

Q How did you know to contact Mr. Brown?

A Well, we had all the evidence from the management. Management told us where the increase was coming from and who to see about the increase. He even gave us the idea to see Mr. Brown if we thought -- because we thought really he was lying when he said it was a 23 percent increase.

Q He said to you, "If you feel there is something wrong about it, go see Mr. Brown and HUD"?

A right.

Q You told Mr. Rothschild that Mr. Brown is the party at Housing and Urban Development to see with regard to the increase?

A Right.

Q You told Mr. Rothschild to send a letter?

A I don't know -- we told him what we did with management, what they told us about Mr. Brown. We didn't tell him to send a letter.

Q Did you ask Mr. Rothschild to start a lawsuit --

MR. ROTHSCHILD: I'm going to object.

MR. OSTRO: I'm asking if he asked Mr. Rothschild to start a lawsuit.

MR. ROTHSCHILD: The discussions between he and the rest of us are not proper.

THE COURT: That may be objectionable. It's a matter between an attorney and client. You may ask him what was done, if anything, after the conversation.

MR. TESSER: One of the most significant points of the trial is the opportunity of the tenants to contest the rental increase and the evidence being brought out now on cross-examination,

your Honor, is the opportunity that the tenants had.

THE COURT: I'm not questioning your effort to put in valid evidence. I'm just ruling on each objection.

MR. OSTRO: I'll do it differently, your Honor.

Q So you had a conversation with Mr. Rothschild?

A Yes.

Q The next thing you knew you were told that there was a meeting scheduled with Housing and Urban Development; is that correct?

A Mr. Brown.

Q With Mr. Brown?

A Right.

Q Who told you that?

A Well, we got it from our attorney. He was the one that set up the meeting. We couldn't do it because we didn't know exactly how to go about doing it. That's why we got the attorney.

Q Now, he tells you that there's a meeting scheduled on September 20th?

A Right.

Q And this was in Manhattan?

A Right.

Q And you went there?

A I did.

Q And anybody else from -- any other tenants go there?

A Yes.

Q What other tenants went?

A About five or six of us.

Q Do you know who they were?

A Women -- There was a few of them, Miss Boone and Mr. -- I don't know his first name, but I know he's in court, Mr. Henderson. He was there. Miss Brown was there.

Q If you can't remember anyone else --

A I can't remember them all because it was quite a few.

Q Were all these people members of the Tenants Association?

A All but one but he was there on account of his mother. His mother lived in the building.

Q He went to object on behalf of his mother?

A Yes.

Q Mr. Brown was there, and did you have an attorney there representing you?

A We had Mr. Allbray was with us.

Q Was there anybody else from Housing and Urban Development aside from Mr. Brown at this meeting?

A It was another fellow came in but I don't know who he was.

Q That's all right.

A I don't know who.

Q There were two people then from the Department of Housing and Urban Development?

A Right.

Q At that point did you ask to see any documents?

A No, I didn't ask to see the document because he had them already laid out when we got there. He showed them to us.

Q You looked at them?

A Yes, we looked at them.

Q The other tenants looked at them?

A They looked at them.

Q Mr. Allbray looked at them?

A He looked at them.

Q Did you say anything to Mr. Brown?

A Yes, he said --

Q No, did you say anything to Mr. Brown?

A Yes.

Q What did you say?

A I asked him was it legal for management to go up with such a tremendous amount of increase with the governmental approval of such increase.

He said, "This is what they presented to us for the increase. If the tenants don't like it, they can do otherwise."

Q Didn't you say on direct examination that Mr. Brown said to you, "If you can show us where any of these documents are fraudulent, then we'll revoke the increase"?

A This is on a different -- This is different from what you're saying.

Q It's what?

A This is different from what you're saying about the fraud. It's different from what you're saying now. You see, this on another -- the fraud was on something else.

Q You mean it was at a different meeting?

A No, the same meeting. What you're saying, you have two opinions there. Now, what he was saying about fraud, if we could dig up some evidence within the Tenant Association against management, wherein it was -- what was wrong to get an increase, that would be a fraud,

the increase, is a possibility the increase would not be granted if you could bring in fraud as enough evidence to prove that it was fraud.

Q Did he give you the documents?

A He sent the documents --

Q No, I'm talking about at this meeting.

A Yes, we looked at the document. I looked at them.

Q Did he give them to you to take with you at that time?

A No, no.

Q Did you ask him to send them to you or to send them to your attorney, that you would like --

A Yes, he sent them to the attorney. Then they were forwarded to me.

Q After the meeting was held, you left HUD. Did you do anything else as president of the association or as a tenant with respect to this increase?

A Yes, I did.

Q What did you do --

A No, I didn't but management did.

Q I'm not asking you about management; I'm asking you what you did.

A That's the only thing I can tell you, because

I didn't do anything else until I heard from management.

MR. OSTRO: I have no further questions.

THE COURT: Is that all of this witness?

MR. OSTRO: That's all.

MR. ROTHSCHILD: Do you have any questions?

MR. TESSER: No.

MR. ROTHSCHILD: I have no further questions.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. ROTHSCHILD: I would like to call Mr. Ingou M. Allbray

I G O R M. A L L B R A Y, having been duly sworn by the Court, testified as follows:

THE CLERK: Full name, and spell your last name, for the record.

THE WITNESS: Igor M. Allbray, A-l-l-b-r-a-y.

DIRECT EXAMINATION

BY MR. ROTHSCHILD:

Q Mr. Allbray, what is your position?

A I'm an employee of the East New York Legal Services. I serve there as a law clerk.

Q Approximately how long have you been with Legal Services?

A I have been with Legal Services a little more than one year.

Q In August or September of this year were you consulted by members of the Grace Towers Tenants Association concerning this increase?

A I was.

Q What did you do thereafter?

A By way of preliminary explanation, the Tenants Association came to our East New York legal offices for representation regarding a rent increase being sought by Grace Housing Development Corporation. I, at the behest of the tenants, contacted HUD at 666 Fifth Avenue to find out more about this increase.

Q When you contacted them were you directed to any particular person?

A I was.

Q Who was that?

A To a Mr. George Brown, whom I later learned was the acting loan manager of FHA.

Q Did you speak with Mr. Brown?

A I did.

Q When did you first speak with him?

A I spoke with him shortly after Labor Da . the precise day I have no precise recollection of.

Q On September 10th did you have a meeting with him?

A I did.

Q What did he say at that meeting?

A (No response)

Q What did you say and what did he say?

A I came to the meeting asking for information regarding the increase and how FHA arrived at it. I also came with some information from the tenants in opposition to the increase.

At the meeting I asked Mr. Brown that FHA give the tenants an opportunity to be heard in opposition to the increase and generally, their other due process rights.

Q What did you state were the due process rights?

A I stated those due process rights as being a full disclosure of all the material submitted in application for the increase from Grace, a tenant opportunity to submit material in opposition to the increase, and finally, a written determination based on all the materials submitted both from the owner and from the tenant, with a reasoned decision, with a reasoned argument as to why this decision should be or not granted.

Q What did Mr. Brown say at that time?

A Mr. Brown agreed to a meeting with the tenants as soon as one could be arranged based on what I understood FHA would give tenants as to a right to be heard.

Q What did he state FHA would give as a right to be heard at that time?

A He stated at that time that all the issues -- that all the procedural matters that I had raised would be granted if the tenants more particularly, also if there was any evidence of fraud or inaccuracy in the application, in the requested materials, that we would also like to know especially about that.

Q Did you subsequently send Mr. Brown a letter setting forth that understanding?

A I did.

Q Is that the letter that appears in Exhibit 5 to the complaint dated September 12th and addressed to Mr. George Brown?

A It is.

MR. ROTHSCHILD: I would ask that be accepted in evidence.

MR. OSTRO: I want to make sure we're talking about the same letter. Show him the letter. Ask

him.

MR. ROTHSCHILD: This letter (indicating). Do you want me to show him the letter?

MR. OSTRO: I want to know if we're talking about the same letter.

(Mr. Rothschild approaches the witness.)

Q I show you this letter dated September 12th, 1974 and addressed to Mr. George Brown, Acting Director, Loan Management Division, and signed Igor M. Allbray, Law Clerk. Is that the letter that you sent to Mr. Brown on September 12th?

A (No response.)

Q Is that a copy of that letter?

A This is a copy of the letter that I sent Mr. Brown.

MR. OSTRO: Might I see it?

MR. ROTHSCHILD: You may.

(Said document handed to Mr. Ostro.)

MR. OSTRO: No objection.

Q That is annexed to the complaint.

MR. ROTHSCHILD: I would ask it be deemed marked.

THE CLERK: Letter dated September 12, 1974, to Mr. George Brown from Igor M. Allbray received

in evidence as Plaintiff's Exhibit No. 2.

(So marked)

Q Did you subsequently have a telephone conversation with Mr. Brown?

A I did.

Q When was that?

A I have no precise recollection of the date it was, however, at the beginning of the week of September 16th, probably a Monday or a Tuesday.

Q What was said during that conversation?

A Mr. Brown spoke to me about the letter that I had sent him dated September the 12th.

Q What did he say?

A He said that the letter did not correctly set forth the understanding that we had reached in his office. In particular, he said that the agency could only entertain material indicating fraud or misstatement in the material sent by Grace to FHA in their request for the rent increase.

He said that FHA had made its determination with respect to the increase and that FHA would not give the tenants a reasoned decision with respect to that but would only give the tenants the letter, a copy of the letter that was sent to Grace indicating approval of the

increase.

Q Subsequently were you present at a meeting on September 20th?

A I was.

Q At that meeting did Mr. Brown give you a document?

A He did.

Q Is that the document that I now show you which appears in Exhibit 5 of the complaint, a letter from the the Department of Housing and Urban Development, signed by Leon Weinberg, dated September 19th, 1974?

A The letter that you're showing me was delivered to me on September the 20th at HUD's offices.

MR. ROTHSCHILD: It's signed by Mr. -- on behalf of Mr. Weinberg; it's the second half of that same exhibit.

MR. ROTHSCHILD: I move that be marked in evidence. I move it be marked as Exhibit 3.

MR. OSTRO: No objection.

THE CLERK: Letter dated September 19th, 1974, addressed to Mr. Igor Allbray from Leon Weinberg received in evidence as Plaintiff's Exhibit No. 3.

(So marked)

Q Can you tell me what was said at that meeting by Mr. Brown regarding the increase?

A (No response)

Q Or regarding FHA -- well, what he said at that meeting.

A Well, Mr. Brown opened the meeting by saying that I had misunderstood what FHA had agreed to with respect to the tenants' rights to submit material in opposition to the increase and what HUD would actually do with that material.

Mr. Brown, if I may characterize, perhaps said apologetically that there were new HUD regulations giving the tenants the kinds of rights that were being sought, but these regulations would not be applicable in this case.

MR. OSTRO: Excuse me. Before I decide to object: Did you say this is your characterization or this is what he said to you?

THE WITNESS:No, this is the gist of what he said. My remark about characterization dealt solely with whether he was apologetic or not. That was my impression, he was apologetic.

MR. OSTRO: I would ask --

THE COURT: That's a conclusion.

MR. OSTRO: Obviously nothing to do with the case at all.

Q Tell us what Mr. Brown said.

A He made a general statement about how FHA had arrived at its decision and the kinds of information that it had taken into consideration.

MR. OSTRO: I'm going to object to that. This is very important. This is not a general statement. I would like --

THE COURT: That's true.

MR. OSTRO: As to what he said.

Q Tell us what he said, his exact words.

THE COURT: Do you recall what was said? You may state it.

A Well, he said that HUD took such matters as mortgage payments, electrical, fuel, gas, utility costs, maintenance costs, into consideration when it made its determination. To the extent of my memory, it was -- those were the things that he basically referred to.

Q What did he say regarding submission of materials by the tenants, if anything?

A He said that if the tenants knew of any fraudulent or incorrect statement made by the Grace management in their submissions, that he would like to

know about them. He made no further statements about what would be done with those materials.

THE COURT: Anything else of this witness?

MR. ROTHSCHILD: Just very briefly.

Q Did he show you copies of documents or did he show you the documents submitted in support of the application which are now Plaintiff's Exhibit 1 in evidence, which was Exhibit 6 to the complaint?

A He showed the group a folder filled with materials. I did not see the particular contents in general. I did not see the particular contents of those materials; that folder, rather.

Q Did he subsequently supply you with copies of the materials in Exhibit 1, Plaintiff's Exhibit 1, that is Exhibit 6 to the complaint?

A He subsequently did.

MR. ROTHSCHILD: No further questions.

CROSS EXAMINATION

BY MR.OSTRO:

Q Mr. Allbray, do you recall -- you said the tenants came to you or some tenants from Grace Housing came to you in August or September. Do you have -- can you recall, be a little more precise, would you know about when it was?

A It was the very end of August or the beginning of September. I believe the end of August falls like on the 29th or 30th of August or shortly after Labor Day which would be the following -- it was the weenend before Labor Day or shortly thereafter.

Q Who came? Do you know how many people came? Let's put it that way, about.

A Three people came.

Q Mr. Mason was one of the people?

A Mr. Mason was one of the people.

Q Who else? Do you know who else was there?

MR. ROTHSCHILD: I'm going to object to that.

MR. OSTRO: I can ask him --

THE COURT: What's the question, Counsel?

MR. OSTRO: I asked who else was there.

MR. ROTHSCHILD: All right. No, I'm going to object. It's both irrelevant and privileged.

THE COURT: No, I'll allow it.

MR. ROTHSCHILD: Very well, your Honor.

A There were two other people, as I said, one was a Mrs. Elizabeth Boone; the second person I believe I have taken a memorandum of -- as to her name. I do not recall that lady's name.

Q By the way, did they show you a letter from Grace at that time?

A They showed me a letter from Grace at that time.

Q Dated August 27th?

A Dated August 27th.

Q Advising them about the increase?

A Advising them about the increase.

Q Approved by HUD?

A It said, the letter alleged HUD had approved it.

Q Now they're at your office. They leave your office. This is now the beginning -- the end of August and you said you got in touch with HUD and you were told to get in touch with Mr. Brown. What did you do? Did you actually physically go to HUD? Did you make a phone call? What did you do?

A I made a phone call to the HUD office, the main office of HUD. I presented the problem in brief to the operator. The operator referred me to Mr. Brown.

Q You said -- When you say "presented a problem," you told --

A A rent increase situation.

Q She said "Speak to Mr. Brown."

A Right.

Q You were connected with Mr. Brown. You spoke with Mr. Brown?

A I did.

Q You told Mr. Brown you represented a tenants' association that had told you they had an increase; is that correct, a rent increase?

A Not quite. I said, "Our office represents." I did not represent the tenants' association.

Q Did you tell Mr. Brown you wanted to come to see him with regard to that?

A I did.

Q You say you went to see Mr. Brown on September 10th?

A I did.

Q Between the time you spoke to --

MR. OSTRO: Strike that.

Q When you went to see Mr. Brown was anybody else with you?

A There was not.

Q Was anybody else present from HUD?

A For a short period of time, yes, someone else was present.

Q Did Mr. Brown have documents with him at that

time?

A Initially, no. He went to get the building folder, I believe. I can't be absolutely positive. I believe what he had was the building folder.

Q Did you ask to see it?

A I did not.

Q Did he show it to you?

A He did not.

Q Did you ask him on what basis HUD granted the increase? I'm talking about the September 10th meeting now. Did you ask him "what basis did you grant the increase on?"

A I did ask him.

Q What did he say?

A He said that HUD considered all the operating expenses of the sponsor and using a formula which he claimed was a complicated formula, arrived at the determination as to whether or not an increase was justified.

Q After he said that, did you say, "Let me see the folder"?

A I indicated that I was interested in having more details.

Q I'm not interested --

A No, I did not ask him for the folder.

Q Did you ask him to see any documents?

A I did not.

Q Then you said you wanted to have another meeting; is that right?

A Yes, I did. More precisely, I said I wanted a meeting to give the tenants an opportunity to be heard in opposition to the material based on their review of the material and submissions and then after that they would make submissions from legal counsel and from their accountant.

Q What did Mr. Brown say?

A He said yes, that would be all right, or words to that effect or behavior to that effect by nodding his head or agreeing.

Q Well, you made an appointment for another meeting, didn't you?

A No, I told him that I would -- that our office would present the understanding that I thought FHA and I had reached to the tenant association and ask them whether or not they wanted the meeting with HUD and if they did, then I would call Mr. Brown back and we would set up a meeting date.

Q You subsequently held a meeting with the tenants -- I'm not asking what happened -- I'm asking you

if you held a meeting.

A (No response)

Q After holding that meeting, did you then call HUD and arrange for this September 20th meeting?

A I did.

Q Spoke to Mr. Brown?

A I did.

Q Do you know when this was, about, the 14th, 15th, 16th of September?

A (No response)

Q Approximately the 18th, 19th?

A It was approximately the end of the 14th, 15th, 16th, 17th, but not the 14th or 15th.

Let's say either the 13th or the 16th or the 17th, which is the following week.

Q You looked at the letter, by the way, that was given to the tenants by Grace Housing when they first came to see, am I correct?

A I did.

Q The letter stated as it was read that the increase goes into effect October 1st, isn't that so?

A Yes.

Q This was the end of August that they came to you, right?

A As I said --

Q Or the beginning of September?

A In the beginning of September, right after Labor Day. I'm not exactly sure.

Q Did you start a lawsuit --

MR. OSTRO: Strike that.

Q Did you bring any action to enjoin HUD from putting this increase into effect prior to this action?

A No.

Q Prior to this action did you start any legal proceedings with regard to this increase?

A We did not.

Q By the way, when did you commence these proceedings?

MR. ROTHSCHILD: This proceeding was commenced December 6th, 1974.

Q Now you come to a meeting with Brown, Mr. Brown. You said Mr. Brown had a folder with him.

A He got a folder.

MR. ROTHSCHILD: Excuse me. Which meeting are you referring to?

MR. OSTRO: September 20th meeting.

A I'm sorry.

Q He had a folder with him?

A He had a folder with him. I thought you were referring to the September 10th meeting where he got a folder.

Q Did he take the papers and lay them out on the table for you?

A He did not.

Q Did he open up the folder and say, "Look at the documents"?

A He did not.

Q Did you tell him you wanted to see the documents?

A We indicated that we wanted to see --

Q I didn't ask you that. Did you say, "Mr. Brown, I want to see the documents. I would like to see the documents, please show me the documents"?

A I didn't say such. I think he understood the purpose of the meeting, the agenda of the meeting, was to review the documents.

MR. OSTRO: I'm going to ask that answer be stricken.

Q I'm going to ask you again: Did you ask Mr. Brown to see the documents?

A In so many words, I did not ask Mr. Brown to see the documents.

Q Did anybody ask Mr. Brown to see the documents?

A I think in general, our attitude was, our expressions were --

Q I'm not interested in your attitude --

A We wanted the information --

MR. OSTRO: I ask again that response be stricken as not being responsive to the question.

Q Mr. Allbray, it's very simple. You didn't ask Mr. Brown to see the documents. Did anybody else ask Mr. Brown, "We would like to see the documents"? Yes or no.

A (No response)

Q Not by indicating or nodding or anything else, yes or no?

A I do not recall that anyone asked. We were given to understand, however --

Q I'm not interested in what you were given to understand.

MR. OSTRO: I ask that response be stricken. I'm not asking you for your response.

THE COURT: Granted.

Q In fact, Mr. Brown sent the documents to you, didn't he?

A He did.

Q He told you what HUD took into consideration in granting the increase at this meeting, isn't that so?

MR. ROTHSCHILD: Well, let's again not say "He told you this." Ask him what Mr. Brown said.

MR. OSTRO: I can cross-examine him. I'm asking him --

Q That he told you or he said to you, "This is the grounds that we use for the basis of the increase." Isn't that so?

A He didn't say that. He said that FHA takes into consideration the information on operating costs, expenses and applies the formula and arrives at a determination.

Q How long did this meeting last?

A Over an hour, from ten o'clock perhaps to eleven, eleven thirty.

Q There was a letter dated September 19th that was introduced into evidence; that was signed by someone for Leon Weinberg. Was this letter sent to you or given to you at the meeting?

A As I previously stated on direct, the letter was -- handed to me on the 20th of September.

Q Did you read the letter that day when you were

at the meeting?

A Yes, I did.

Q This letter says in part, does it not, "We will make available to the Association and/or their representatives all materials submitted by the mortgagor in substantiation of their request for increased rentals, also a photocopy of letter dated August 1, 1974 approving the present rentals."

Didn't that letter say that?

A That's right.

Q Didn't the letter also say, "Again, if you have any knowledge of the submission of untruth or inaccuracy of the submitted material, we would appreciate your advice and evidence thereof."

MR. ROTHSCHILD: Objection. The letter speaks for itself.

MR. OSTRO: I don't know what it means.

MR. ROTHSTEIN: The letter says what it says.

MR. OSTRO: I'm cross-examining. Might I have a ruling?

THE COURT: It could be presented either way. Counsel could tell me what the letter says or read it out here. It does not do any harm.

MR. OSTRO: Again it says, "If you have any

knowledge of the submission of untruth or inaccuracies in the submitted material, we would appreciate your advice and evidence thereof."

THE WITNESS: The letter says that.

THE COURT: What's the date of that letter?

MR. OSTRO: September 19th, 1974.

Q You left the meeting after an hour and a half when you didn't ask for any documents and documents were subsequently mailed to you; am I right?

I just want to get the time straight.

A The FHA through Mr. Brown said they would Xerox the documents for us that day and provide them to us.

Q O.K. He sent them to you.

A (No response.)

Q Or someone --

A He tried to Xerox them and the Xerox machine was broken so we could not take them with us on the 20th and he asked us to call the following week and have someone pick them up. He would have them ready for us the following week.

Q Someone picked them up?

A Someone picked them up.

Q That would have been about September --

A 23, to be precise.

Q After you got the documents from Mr. Brown, did you get in touch with HUD again, the Department of Housing and Urban Development, or Mr. Brown?

A I did.

Q Did you call him?

A I did.

Q What did you say to him?

A I told him that we had submitted the materials to our accountant, who was experienced in doing accounting and auditing on these types of federal subsidized housing developments and that our accountant had indicated to us that materials were either missing or questionable and were there any other materials that should have been in this package and were not included.

Q Did you ask for another meeting?

A I did not.

MR. OSTRO: I have no further questions.

CROSS EXAMINATION

BY MR. TESSER:

Q This first meeting, you stated that you came to the meeting with certain materials from the tenants --

THE COURT: Are counsel both on the same side?

MR. TESSER: I am representing the Federal

defendant, the United States.

MR. OSTRO: I represent the manager, the owner.

THE COURT: You're representing different clients.

MR. ROTHSCHILD: Very different parties.

THE COURT: Very well.

Q You stated you came to this first meeting with certain materials from the tenants?

A The first meeting I gather you're referring to the September 10th meeting?

Q Yes.

A I came with a couple of documents, namely, a letter from Grace stating the increase had been approved and how much it would be plus a lease and a rider.

Q I believe that you also stated you came with some documents from the tenants that would in some way counter the rent increase.

A I didn't say that.

MR. ROTHSCHILD: I don't believe he said that.

THE WITNESS: I did not say that.

Q At the meeting of September 10th, did you submit any materials to Mr. Brown or to anyone else at HUD?

A I submitted no materials.

Q At the meeting of September 20th, did you submit any materials to Mr. Brown or anyone else from HUD?

A We submitted no materials.

Q At either of the meetings were you ever denied the right to submit materials which you were offering to them?

A We were never denied the right to submit materials.

Q At either of these meetings did you ever ask for the delay of the effective date of the rent increase?

A I did, with the hope that we could dispatch this matter as promptly as possible so that a determination could be made prior to the effective date.

Q You stated that there were -- after you received the letter and you discussed the matter of the truth or matter of being able to submit matters which went to the untruth or inaccuracies of the other materisls, you then stated there were no other statements regarding the submissions? Is that correct?

A I believe so.

MR. ROTHSCHILD: I think you're trying to characterize a whole lot of testimony. I think he said more than that.

Q I'm at the point at which you were told if you have anything which is untruthful or inaccurate to counter what was shown you or to counter the materials in this package, to please let them know. You stated there were no other statements after that.

A Well, he stated that at the close of the meeting, within the meeting of September 10th, I had conveyed to him the allegations of the tenants regarding the way the project was operated, possible mismanagement problems -- questions regarding the fuel bills and other issues. I did not present those as materials. I made verbal presentation of the objections, things like the roofs were leaking in a brand new building, the elevators were not operating; that the electrical wire was defective, electrical fires throughout the building, such things as this I brought to his attention verbally.

Q Did Mr. Brown indicate to you or did Mr. Brown say to you, "If you could prove the untruth or inaccuracies of the material that was submitted that HUD would reconsider the rent increase?

A I understood him to say if we could disprove the inaccuracies -- disprove the accuracy of the presentation, that HUD would reconsider the increase, yes, at the September HUD meeting.

Q Did you say that you had a talk with Mr. Brown regarding findings of an accountant that you had submitted the materials to?

A Yes.

Q Did you ever send to HUD the result, the report of the accountant?

A No, the accountant made no formal report that would be intended to be presented to FHA at that time.

MR. TESSER: No further questions.

REDIRECT EXAMINATION

BY MR. ROTHSCHILD:

Q Just a few questions. You stated that you asked for a delay in the date of effectiveness of the rent increase; is that correct?

A Yes.

Q When did you request that?

A I believe that was requested during phone conversations.

Q With Mr. Brown?

A With Mr. Brown.

Q What was his response --

MR. OSTRO: When? When was it?

THE WITNESS: During the period September 14th through September the 16th or 17th.

Q What was his response?

A His response was that the decisions had been made to grant the increase and there was nothing more that could be done but what he had promised to provide at a meeting with the tenants.

Q You also said that at a certain point after September 20th, you spoke to Mr. Brown regarding the accountant, regarding and following a discussion with the accountant. Can you recall when that discussion took place with Mr. Brown, approximately?

A Well, it was, again, during the telephone conversation of September 14th through the 16th or 17th that I told him what the accountant had stated, and I said that would be one of the things that we would want to -- these are some of the things that we would want to get into in our review of the application, the materials submitted.

Q I'm sorry, I thought that was after the September 20th meeting.

A (No response)

Q Perhaps I'm confused.

q A No, I guess -- No, that was not after the September 20th meeting. We had -- wait a minute. I'm sorry, you're right. My mistake. I'm confused. The material was submitted to the accountant the week of September 23.

Q Yes, and --

A And --

Q I'm sorry. Go ahead. Then thereafter you spoke with Mr. Brown?

A After information was gathered from the accountant, I believe there were further discussions with Mr. Brown, yes.

Q Can you tell me approximately when that was?

A These discussions were the week of the 23rd of September, probably towards the end of the week.

Q Can you tell me what you said and what Mr. Brown said?

A I argued -- I presented in brief -- my understanding of the analyses of the accountant of the materials--

Q What was that?

MR. OSTRO: I object.

Q What did you say to Mr. Brown?

A I said to Mr. Brown that the accountant said--

MR. OSTRO: I object to any testimony about what the accountant said as being hearsay.

THE COURT: We already had that.

MR. ROTHSCHILD: It seems to me he's not testifying to proof the accountant actually said it. He's testifying as to what he said to Mr. Brown,

which is not hearsay. He said to Mr. Brown, "The accountant told me thus and so."

THE COURT: I'll allow it. You may proceed.

A The accountant told us that the electrical bills -- that the fuel bills that were presented in the materials and in a summary fashion -- there were no actual bills existing there; that there were no gas bills and we understood the owner paid for the gas; that there were no documents regarding the actual salary cost over a yearly basis, and the materials, salary cost of employees who maintained the operation; there was no statement of management agreement or the actual cost of the management agreement; that there were no certified statements from public accountants; that the application -- that the materials submitted in the application for the increase were not sufficient to grant an increase based on all the evidence that he had before him and that he could not make that determination further than that.

Q Did you ask him if there were other materials?

A I asked him whether there were other materials.

Q What was his response to these statements and this request?

A His response was that he had given us all the material he was able to give us at this point.

Q Did he say anything else with regard to your statements or in response to what you said?

A Reiterating again that if we had any evidence of fraud or inaccurate statement in the materials it should be brought to his attention because they would be very interested to get somebody who would pull the wool over the eyes of the government, or something to that effect.

MR. ROTHSCHILD: No further questions.

RECROSS EXAMINATION

BY MR. OSTRO:

Q You had a telephone conversation with Mr. Brown you say on September 16th, asking about the delay of the effective date of the increase, am I correct? That's what you so testified to; is that so?

A That was one of the matters that we talked about.

Q After Mr. Brown -- Now, Mr. Brown said no; isn't that correct, that he could not delay it?

A Mr. Brown said that we would have the meeting.

Q After you made this request to him, did you bring any lawsuit, any action, in any court other than this lawsuit which was started in October, to enjoin the

increase from going into effect as of October 1st, 1974 -- yes or not?

A We brought no action.

Q After you told Mr. Brown on another day -- I think you said September 20th or the 23rd, about this accountant -- the alleged statement given to you by an accountant, you told this to Mr. Brown. Isn't it a fact that you didn't send Mr. Brown a letter stating what this accountant told you?

A That's a fact.

Q Didn't this accountant send you a letter?

A He did not.

Q Are you telling me that you don't have a letter in your files from this accountant stating that based on the evidence that you have given to me that you don't feel a determination should be made? Are you saying there is no such letter in existence?

A There is no such letter. There is an affidavit from the accountant to that effect.

Q Did you send that affdiavit to Mr. Brown?

A We did not.

MR. OSTRO: No further questions.

THE COURT: Is that all?

MR. ROTHSCHILD: No further questions.

THE COURT: You may step down.

(Witness excused)

MR. TESSER: The Government does not intend to call any witnesses, your Honor.

MR. OSTRO: Your Honor, Grace will rest. We don't intend to call any witnesses, your Honor.

MR. ROTHSCHILD: We have no other witnesses on this point.

MR. OSTRO: Your Honor, on behalf, at this time, on behalf of the Grace Housing Development Fund Company, Inc. I move to dismiss the complaint on the grounds, first, that the plaintiffs have not established a prima facie case.

Secondly, that they have not proved their case by a fair preponderance of the credible evidence.

MR. TESSER: The Government institutes the same motion, your Honor.

MR. OSTRO: Your Honor, I would like to be heard on these motions, if I may.

THE COURT: Yes, you may be heard.

It might be well at this point to take a ten minute recess.

(Recess)

THE COURT: Counsel, you may proceed.

MR. OSTRO: Your Honor, at the outset I would ask my memorandum of law, which I had previously submitted on the motion for a temporary injunction -- in oppcsition to the motion for a temporary injunction be deemed as a trial memorandum because it covers the same issues.

THE COURT: Do you have that memorandum?

MR. OSTRO: Yes, I have it.

THE COU T: Off thc record.

(Discussion off the record.)

THE COURT: On the record.

MR. OSTRO: Your Honor, in support of my motion, I wish to just review what went on here today and comment on it.

To begin with, my client is management, Grace Housing Development Fund Company, Inc. They made an application for an increase. They made the application pursuant to regulations existing at the time.

There is no claim we didn't follow the regulations. We did what we were supposed to do under the existing regulations.

The question here of due process, I think, really is a question of fairness and a question of

what actually took place under these circumstances. Testimony is heard. Meetings were held, admitted, that the president of the tenants' association -- as a matter of fact, the meeting was held pursuant to a suggestion by management, and that comes out of the testimony of the president of the tenants' association.

We have one meeting at which an attorney is present. The attorney presents the fact that he wants to see documents.

The Government says, "O.K. Come back. We'll arrange for a meeting and we'll have a meeting at which you can see them."

They come back to the meeting and there's a very interesting variance in the testimony. The president of the tenants' association, Mr. Mason, says, "Mr. Brown laid out all the evidence for me. He gave us everything at the table. He said, 'Look at them; we're going to copy them and we're going to send them to you.'"

Mr. Allbray, who is counsel present at the meeting says, "Oh, no. Mr. Brown held the folder. Mr. Brown had a folder. I never asked him for it. I never saw it. I never saw what was inside at the time. I never asked him for it."

It sounds strange, to be very honest about it, an attorney sitting at a meeting at which he says, "We want to see your documents," and that's why the meeting is arranged. He says at the meeting no documents were shown to him and he didn't ask for them and it conflicts directly with the testimony of the president of the tenants' association that retained him.

More than that, even if there is a discrepancy and it's considered as not being important, what did the tenants' association do? They protested, had two meetings, one at which counsel, an attorney, was present; a second time when they were present with an attorney present. The attorney made repeated phone calls to Housing and Urban Development and was told, "If you have evidence of fraud, tell us."

He says, "I have an accountant's report." Not a record, an affidavit. He never sent it to him.

Notification is sent to the tenants August 12th. This lawsuit is started in October. Plenty of time to start a lawsuit. A lawsuit could have been commenced, could have started a lawsuit to stop this increase, to enjoin the effective date

of the increase.

We're here today on an equitable case, a case for an injunction, to void an increase that management says, "We need, otherwise we're going to go bankrupt." Nothing is done until the effective date of the increase. The effective date goes by. Then something is done.

Now they come in and now they say, "We want the increase voided entirely."

What does due process require? How many times can you have an opportunity? It seems to me due process is fairness, an opportunity to present your side of a case, is an opportunity to question documents submitted. Documents were sent. It's an opportunity to send, if you have an accountant's report, to forward it to the Department of Housing and Urban Development and say, "Here's what our accountant says," and that wasn't even done.

All this time goes by. No lawsuit is started by the plaintiff prior to the effective date of the increase and they had plenty of opportunity and even counsel, on his testimony, even counsel said that Mr. Brown, from HUD Xeroxed the documents. He said, "I can't get them all Xeroxed. Come up here," gave them the documents, turned them over to

examine. What more can be done? What more can management do? We did everything required of us in a desperate suitation, because whether it's briefed or not, it's desperate, and now we're here being asked, "No, you can't have this increase. We want it voided entirely, voided entirely because due process wasn't had."

If this was not due process, then I don't know what else could have been done. Not only did they have a chance to examine, as far as I'm concerned and as far as the testimony is concerned, they had what is tantamount to a hearing. Even under the regulations today you're not entitled to a hearing.

I submit that they have had that hearing and they had two hearings, one of which counsel was present alone, and one of which counsel was present along with the other people.

I think due process has been very well satisfied and very well served in this case. Therefore I ask the complaint be dismissed.

MR. TESSER: Your Honor, the Government also contends that the tenants were afforded due process but even before we get to that issue, there's a legal issue which we haven't made other than in our

briefs, that due process isn't even required to be given to the plaintiffs. There are cases in the Second Circuit which are still valid, which require that tenants aren't entitled to this, any form of due process; however, other circuits have determined that some sort of due process is required, but even they have a question of how much, we'll let that go, and assuming arguendo that some sort of due process is required, how much?

In the Chenango case, discussed earlier, your Honor, decided by Judge Friendly in the Second Circuit, the court did not overturn a rent increase. In that case tenants had gone to the FHA and said, "We'd like to see your documents," and the FHA said, "No, you can't even look at them." That case, the rent increase was not overturned.

In our case HUD gave them the documents. In the Chenango case, the tenants went to FHA and said, "We'd like an opportunity to submit materials to you," and FHA said, "No, you do not have the right to submit materials to us," and still the Second Circuit said, "We're not going to overturn this rent increase."

In this case, not only did we -- not only did the Government not say, "We're not going to

give you an opportunity to submit documents, but it gave them two meetings and a letter which said, again, "If you have any information, give it to us."

On the testimony given to you, your Honor, there was never an attempt to suhmit one piece of written testimony to HUD. There was never an attempt, either by letter or by a submission of evidence. They didn't even give HUD an opportunity to refuse or accept any evidence.

What alternative did HUD have? I submit, your Honor, that whatever the Government was asked for in this case, it gave. What more due process can there be?

The tenants were very well represented. If the Government were as convinced of the merit of this case as much as they're convinced of the effective and eloquent advocacy of their attorneys, we'd have no problem in saying, "Go ahead, you're right," but this is not the case, your Honor. The plaintiffs have not made any case. Everything that they asked the Government for was given to them.

MR. ROTHSCHILD: I think there are two things that I would like to say. First, as regards the question whether due process is required in fact,

not only have other circuits specifically held that due process is required in this sort of case, but the Second Circuit has specifically backed off from its holding in the Chenanco court case.

In Lopez v. Henry Phipps Lassa South, Inc., cited in your brief on page 8, the Court says, at 498 F.2d 942, "We leave open what if anything due process requires with respect to rent increases in a project like this," referring to a project of the same sort as the one involved in this case.

I might point out in Chenango, as I recall the owner was not a non-profit sponsor with city and state subsidy, but was a private developer in business for profit, and I think that does make some difference.

That leads to the next question. Repeatedly counsel for management and for the Government have said, "What more can be done?"

I think it's quite clear what more could have been done. They did give us the documents but then the only thing they said they were interested in was evidence of fraud or inaccuracy. They were not interested in evidence of whether their decision was wrong, based on the evidence that they had. They were interested in whether there was

fraud or inaccuracy in the documents submitted and they said, "If you give us evidence of fraud or inaccuracies, then we'll decide if we want to reopen this," and I think that is the substance of what both Mr. Allbray and Mr. Mason testified.

I think that is also clearly the meaning of the letter on behalf of Mr. Weinberg, which is in response to the letter of Mr. Allbray. Mr. Allbray says, "Give us the materials. Let us submit materials in opposition and come to a determination based on all the materials, and explain how you reach that determination. Give us a reasoned decision." That's what the tenants are asking for. That's what they asked through the whole case.

Mr. Weinberg says, "Your letter does not set forth the position of HUD." He says, "Your letter does not quite set forth our position, which perhaps you have misunderstood." He says, "We will make available to the association all materials submitted by the mortgagor," and they did make that available. But then all he says is, "If you have knowledge of the submission of untruth or inaccuracy in the submitted material, we would appreciate your advice and evidence thereof." He doesn't say, "Give us your contentions regarding

this material. He doesn't say, "We'll make a determination based on their evidence and your evidence." All he says is, "I'm a Government agency. If you submit something, I'll accept that. I won't refuse it."

I think that that is not enough. I think that the tenants were entitled to more, and are entitled to more, and that is the reason that we commenced this proceeding. Thank you.

THE COURT: Very well. That concludes your presentation, I take it, gentlemen.

MR. TESSER: Yes.

MR. OSTRO: Yes.

MR. ROTHSCHILD: Yes.

THE COURT: I want to check whether we have your brief.

MR. ROTHSCHILD: Our memorandum submitted --

THE COURT: I just want to see we have all the briefs. I have one here (indicating).

MR. ROTHSCHILD: That's the Government's brief submitted this morning. Our memorandum was submitted with the motion for a temporary restraining order.

THE COURT: Is it there.

MR. ROTHSCHILD: Very well.

THE COURT: Decision reserved.

MR. ROTHSCHILD: Thank you, Judge.

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CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

GRACE TOWERS TENANTS ASS'N, etc.

vs : 74C-1714

GRACE HOUSING DEVELOPMENT FUND CO, et al

:

----------x

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing certified copy of the Docket Entries from A to B and the original papers numbered from page 1 to 17 (including seven exhibits in support of the complaint) constitute the Record of Appeal.

I further testify that the last day to file said record ~~is~~ was March 11, 1975.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 25th day of March in the year of our LORD, One Thousand Nine Hundred and 75 and of the Independence of the United States One Hundred and 99.

LEWIS ORGEL
CLERK

By: MARC MILLER
DEPUTY CLERK

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACE TOWERS TENANTS ASS'N, etc. et al

vs. : 74C-1714

GRACE HOUSING DEVELOPMENT FUND CO., INC., etc. et al

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing certified copy of the Docket Entries from A to B and the original papers numbered from page 18 to 19 constitute the supplemental Record of Appeal.

~~I further certify that the last day to file said~~

~~_____~~.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 28th day of March in the year of our LORD, One Thousand Nine Hundred and 75 and of the Independence of the United States One Hundred and 99.

LEWIS ORGEL
CLERK

By: MARC MILLER
DEPUTY CLERK

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

GRACE TOWERS TENANTS ASSN.

v.

GRACE TOWERS HOUSING DEV. FUND, et al 74C 1714

----------x

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing copy of the Docket Entries from A to B and the ~~original~~ Supplemental papers numbered from page 1 to 20 and 21 constitute the Record of Appeal.

I further testify that the last day to file said record is _____.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 25th day of APRIL in the year of our LORD, One Thousand Nine Hundred and seventy four and of the Independence of the United States One Hundred and 99.

LEWIS ORGEL
CLERK

By: HAROLD GLEIN
DEPUTY CLERK

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74C 1714

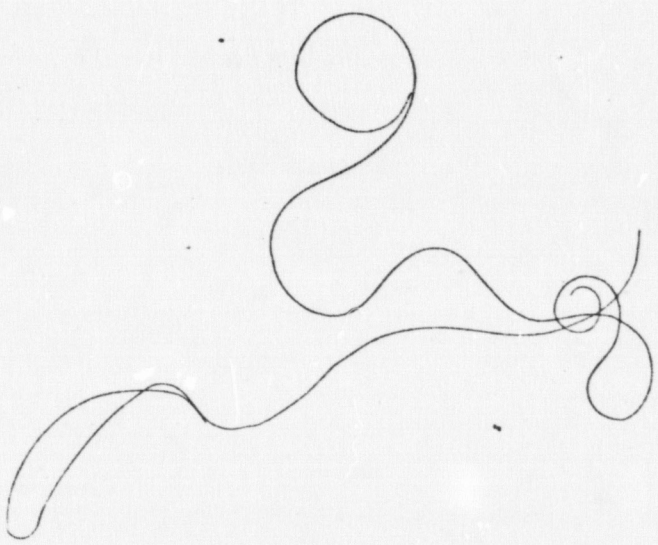

EXHIBIT 1. 214

Agreement made and entered into as of the 6th day of December 1961 by and between the City of New York, a municipal corporation of the State of New York (hereinafter referred to as the "City"), and the Crane Housing Development Fund Company (hereinafter referred to as the "Housing Company"), a corporation duly organized pursuant to the provisions of Article XI of the Private Housing Finance Law of the State of New York, as amended (otherwise known and hereinafter sometimes referred to as the Housing Development Fund Companies Law), having its principal place of business at 475 Vermont Street, Brooklyn, New York 11207.

WHEREAS, substandard or insanitary conditions exist in the Central Brooklyn Community Development Plan Area, (also referred to as "Urban Renewal Plan Area"), to be redeveloped, as a part of which Area is defined in Paragraph 101 hereof and is hereinafter referred to as the "Housing Site" and which said site is part of the Central Brooklyn Community Development Plan Area; and

WHEREAS, the City desires to effectuate the rehabilitation of said deteriorating Area in order to provide for housing, and to make adequate provision for recreational and other facilities appurtenant thereto; and

WHEREAS, the City Planning Commission of the City of New York (hereinafter referred to as the "City Planning Commission") has held public hearings following notice of the date, time, place and purpose of such hearings, with respect to the conditions existing in said Area; and

WHEREAS, following such hearings, the City Planning Commission has found that said Area is a substandard or insanitary area appropriate for Urban Renewal and designated the same accordingly pursuant to the provisions of Article 15 of the General Municipal Law, as amended, and

WHEREAS, there has been formulated and presented to the City Planning Commission for consideration and approval a plan (hereinafter called the "Urban Renewal Plan"), annexed hereto and marked Schedule A and hereby made a part hereof, which Urban Renewal Plan provides for the acquisition, clearance, redevelopment and rehabilitation of said Urban Renewal Area and the construction therein of low and moderate income housing, and such business, commercial, parking, cultural and recreational facilities as are deemed reasonably incident thereto, and which Urban Renewal Plan was unqualifiedly approved by the City Planning Commission after public hearings thereon; and

WHEREAS, the Board of Estimate having held a public hearing thereon, following notice of the date, time, place and purpose of such hearing, approved the Urban Renewal Plan and made appropriate findings pursuant to Article 15, subdivision 4 of Section 505 of the General Municipal Law; and

WHEREAS, the City has or will acquire, pursuant to the provisions of Article 15 of the General Municipal Law, as amended, all real property in said Housing Site (not owned by it), by condemnation vesting title in the City upon entry of the order of condemnation in the proceedings therefor, and shall sell, convey and otherwise dispose of the real property in said Housing Site (more particularly described in Paragraph 101 hereof) upon such terms and provisions as shall insure the clearance, replanning and reconstruction of the Housing Site by a corporation organized under Article XI of the Private Housing Finance Law of the State of New York, as all provided herein; and

WHEREAS, there has been formulated and presented to the Housing and Development Administration for consideration and approval a plan (hereinafter called the "Project Plan"), annexed hereto and marked Schedule B and hereby made a part hereof, which Project Plan provides for the rehabilitation of said Housing Site and the construction thereon of low and moderate income housing (hereinafter sometimes referred to as the "Project") to be undertaken by the Housing Company and approved by the Housing and Development Administration pursuant to Article XI of the Private Housing Finance Law, as amended; and

WHEREAS, a proposed form of this Agreement has been submitted with the Certificate of Approval of Bids to the Board of Estimate of the City for its approval, and such approval has been duly granted; and

WHEREAS, the Housing Company has been duly organized for the purpose of acquiring, improving and rehabilitating the Housing Site in accordance with the provisions of the Urban Renewal Plan, Article 15 of the General Municipal Law, as amended, and the terms and provisions of this Agreement; and

WHEREAS, the Housing Company proposes to purchase the real property in the Housing Site from the City upon the terms and conditions hereinafter set forth in this Agreement and to undertake a project thereon pursuant to the provisions of Article XI of the Private Housing Finance Law, as amended, and Article 15 of the General Municipal Law, as amended; and

WHEREAS, it is contemplated that the Housing Company will undertake and operate the Project as a rental housing project; and

WHEREAS, it is contemplated that the financing of the Project Plan shall be done by means of a mortgage loan insured by the Federal Housing Administration (hereinafter called the "Agency") pursuant to the provisions of either Section 221 (d)(3) or Section 236 of the National Housing Act, as amended, and that the Project will be regulated by the Agency pursuant to the provisions of the National Housing Act, as amended; and

WHEREAS, the parties hereto desire to enter into this Agreement relating to the acquisition by the Housing Company of the Housing Site and the construction of the Project, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, each of the parties hereto, for and in consideration of the promises and agreements of the other party, does COVENANT AND AGREE AS follows:

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CONVEYANCE

101. The City agrees to sell and convey to the Housing Company, and the Housing Company agrees to purchase from the City, all those plots, pieces or parcels of real property described in Schedule C annexed hereto and hereby made part hereof (Said parcel or parcels are hereinafter referred to as the "Disposition Area" or Housing Site).

102. (A) The purchase price of the Disposition Area shall be eighty-four thousand dollars ($84,000.00) payable as follows:

(1) Upon the execution of this Agreement, the Housing Company shall deposit with the City the sum of TEN Dollars ($10.00) in lawful money of the United States.

(2)$83,990.00 shall be paid upon delivery of the deed of the Disposition Area, by certified check or bank draft drawn upon a bank doing business in the City of New York, subject to collection, made payable to the Finance Administrator of the City of New York. The date, time and place for delivery of the deed shall be determined in accordance with the provisions of subdivision B of this Paragraph 102.

102. (B) It is intended that the deed of the Disposition Area shall be delivered by the City to the Housing Company simultaneously with the execution, delivery and acceptance by and between the Housing Company and a Lender-Mortgagee of a note, building loan agreement, and mortgage providing for the financing of the construction of the Project and effectuation of the Project Plan (hereinafter said note, building loan agreement and mortgage is sometimes referred to as the "Mortgage"). Said mortgage shall be initially endorsed for insurance by the Agency simultaneously with the execution, delivery and acceptance thereof (hereinafter said simultaneous delivery, acceptance and endorsement of the Mortgage is sometimes referred to as the "Closing of the Mortgage"). The parties hereto accordingly agree that:

(1) The Housing Company (a) shall process expeditiously its application with the Agency for the insurance of the Mortgage, (b) shall comply with all requirements imposed by the Agency as conditions to the granting of insurance of the Mortgage, (c) shall negotiate and accept a Mortgage in such amount as tendered by the Agency, and (d) shall close the Mortgage and insurance commitment on the date determined by the Agency.

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(3) Taxes, assessments, water rates and sewer rents, shall be apportioned as of the date of closing of title.

(4) No brokerage commission shall be paid by the City of New York or by the Housing Company.

ARTICLE II
CONSTRUCTION

201. As soon as title to the Disposition Area shall have vested in the Housing Company, it shall proceed to effectuate the Project in accordance with this Agreement. This obligation shall be a covenant running with the land, provided, however, it shall be subject to and limited by the provisions of Paragraphs 103, 505, 505 A, 505 B, and 505 C, hereof.

The Housing Company shall not use, rent, license or permit the temporary use of the vacant land in the Housing Site.

The Housing Company shall, at its own cost and expense, erect and maintain project signs identifying the interests of the Agency and the City, in such size and form as shall be approved by the HDA.

202. The Housing Company agrees to undertake and carry out, in accordance with the provisions of this Agreement, the Project, which consists of the construction of all improvements on the Housing Site (hereinafter sometimes referred to as "construction of the project") in accordance with the Urban Renewal and Project Plans and in accordance with the site plan and unit plans and the apartment distribution schedule shown on the unit plans set forth in Schedule [illegible]

It is agreed, however, that the aforementioned site plan and unit plans are typical only and it is not intended that they or any of them shall necessarily be the plans finally utilized for construction of the Project. The Housing Company may, therefore, propose amendments, modifications or corrections of any nature of such site plan and/or unit plans as it shall decide (which amendments, modifications and corrections are in this Paragraph 202 collectively referred to as "new plans"), provided that such new plans comply with the requirements of the Urban Renewal and Project Plans and shall be approved in writing by the HDA and the Agency, which approval shall not be unreasonable withheld.

The Housing Company shall submit new plans to the HDA and the Agency. If the HDA does not reject such new plans within thirty (30) days after such new plans are submitted to it such new plans shall be deemed approved by the HDA.

Notwithstanding any inconsistencies between the Urban Renewal Plan and The Project Plan it is understood and agreed that the Housing Company shall be governed by and construct the improvements for the Project pursuant to the more restrictive provisions contained in either.

If required by the Urban Renewal Plan, the Housing Company agrees to set back buildings and structures in accordance with the Urban Renewal Plan for the Project, and agrees to construct upon such open areas, plazas or private streets pursuant to plans and specifications therefore approved by HDA, and the Housing Company further agrees to operate and maintain the areas, at its own cost and expense as free and open areas for the use of the public.

At the earliest possible date consistent with the processing of its application for the Mortgage with the Agency, the Housing Company agrees to proceed with the preparation of final building plans and specifications for the Project, to complete such plans and specifications expeditiously, and to submit such plans and specifications to the HDA and the Agency for their approval immediately upon completion thereof but in no event later than eight (8) months from the date of execution and delivery of this Agreement unless said date is extended by the HDA and the Agency. The Housing Company shall not commence construction until the final building plans and specifications for the Project or any portion thereof, have been approved by the HDA and the Agency. If the HDA does not reject such final building plans and specifications as aforesaid within thirty (30) days after submission thereof, such plans and specifications shall be deemed approved.

Upon completion of the Project, the Housing Company agrees to submit to the HDA three sets of tracings or prints showing all work as built. The "as built" drawings shall indicate on their face the locations, elevations and sizes of all buildings and work as actually built and installed. Such locations and elevations shall be shown by offset distances from permanent surface improvements such as buildings, retaining walls or curbs, and such sizes shall be shown by dimensions in feet and inches.

The City shall accept as sufficient security for performance of the contract such payment bond, performance bond, cash deposit, irrevocable letter of credit or such other or different security as may be required or approved by the Agency.

203. (a) Construction of the improvements on the Housing Site shall be commenced within six (6) months after the date of closing title and shall be completed within two (2) years after the date of closing title, or on such other date or such other date as may be fixed in the construction contract entered into by the Housing Company and its general contractor and approved by the Agency (hereinafter called the "Construction Contract"), whichever shall be the later.

Construction of the improvements on the Housing Site shall be deemed completed when there shall have been issued for all of the buildings on the Housing Site provided for in the then site plans of the Project approved in accordance with Paragraph 202 hereof, a temporary or permanent certificate of occupancy by the Department of Buildings of the City of New York.

Promptly after completion of improvements in accordance with the provisions of this Agreement, the City will furnish the Housing Company with an appropriate instrument so certifying. Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligation of the Housing Company, and its successors and assigns, to construct the improvements, and the dates for beginning and completion thereof;

PROVIDED, That if there is upon the Property a mortgage insured, or held or owned, by the Agency and the Agency shall have determined that all buildings constituting a part of the improvements and covered by such mortgage are, in fact, substantially completed in accordance with the Construction Plans and are ready for occupancy, then, in such event, the HDA and the Housing Company shall accept the determination of the Agency as to such completion of the improvements in accordance with the Construction Plans, and, if the other agreements and covenants in the Agreement obligating the Housing Company in respect of the construction and completion of the improvements have been fully satisfied, the HDA shall forthwith issue its certification provided for in this Section. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Housing Company to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the improvements, or any part thereof.

All such certifications provided for in this Paragraph 203 shall be in such form as will enable them to be recorded in the Office of the City Register for the County wherein the Housing Site is located. If the City shall refuse or fail to provide any certification in accordance with the provisions of this Paragraph 203, the City shall, within 90 days after written request by the Housing Company, provide the Housing Company with a written statement indicating, in adequate detail, in what respects the Housing Company has failed to complete the improvements in accordance with the provisions of this Agreement or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Housing Company to take or perform, in order to obtain such certification.

It is expressly agreed by the parties hereto that the Housing Company shall not have the authority of power to sell, transfer or lease the housing site for redevelopment by a redeveloper other than the Housing Company unless express provision for same is made in this Agreement or approval for such sale, transfer or lease is authorized by HDA and the Board of Estimate of The City of New York.

(B) Anything in this Agreement to the contrary notwithstanding in the event of any enforced delay or delays in the performance of the Housing Company's obligations under this Agreement by reason of (1) any acts, laws, rules, regulations or orders of the Federal Government or of the State or City of New York, including but not limited to, controls or restrictions upon a requisitioning of materials, equipment, tools or labor due to war, national defense or emergency; (2) judicial or other legal restrictions on the prosecution of the Project; (3) actions of the City, State or Federal Government; (4) acts of God or of the public enemy, acts of any other contractor or agency in the performance of any contract with the City for work in this area, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes and weather of unusual severity such as hurricanes, tornadoes and cyclones; or (5) any delay or delays of any other contractor engaged by the Housing Company, because of any of the matters contained in this subdivision B of Paragraph 203, the time for the performance of the Housing Company's obligations under this Agreement shall be extended, for any one or more of the causes set forth above, for such periods as the HDA and the Agency shall find in writing to be the period of such enforced delay or delays, provided that the Housing Company notifies the HDA and the Agency in writing, within sixty (60) days after the beginning of such delay or delays, of the delay or delays and the cause or causes thereof. If there should be any enforced delay or delays for causes other than those listed in this subdivision B of Paragraph 203, which delay or delays are beyond the control and without the fault or negligence of the Housing Company said delay or delays (but in no event to exceed six months) may be excused in writing for the period of such delay or delays by the HDA and the Agency. The HDA and the Agency may also excuse in writing the failure to send timely notice of any delay or delays as provided for above.

(C) All activities relating to construction of the improvements herein shall progress and be performed pursuant to the work schedules for construction of the Project established by the Agency, as such schedules may from time to time be revised or be amended by the Agency.

If at the end of any quarter-annual period referred to in such work schedules, the construction of the improvements on the Housing Site has not progressed as required by such work schedules, as revised or amended, and such delay is not excused pursuant to the provisions of subdivision B of this Paragraph 203, then in that event the Housing Company shall be in default under the terms of this Agreement.

In the event that the delay or delays, referred to in subdivision B of this Paragraph 203, interfere with the performance of some of the Housing Company's obligations, but do not prevent the performance of other obligations of the Housing Company, particularly, but not limited to, construction, the Housing Company shall proceed in accordance with this Agreement with those obligations the performance of which was not prevented by such delay or delays, unless the HDA and the Agency shall otherwise direct in writing. The Housing Company shall proceed with all or part of such obligations, as herein provided.

204. The Housing Company shall submit a report in writing to the IDA within one (1) month after it acquires title to the Housing Site and every three (3) months thereafter as to the progress of the construction of the improvements on the Housing Site.

205. (A) The Housing Company hereby waives (as the purchaser of the Property under the Agreement and as the owner after the conveyance of the Property provided for in the Agreement) any and all claims to awards of damages, if any, to compensate for the closing, vacation, or change of grade of any street, alley, or other public right-of-way within or fronting or abutting on, or adjacent to, the property which, pursuant to the Urban Renewal Plan, is to be closed or vacated, or the grade of which is to be changed, and shall upon the request of the City subscribe to, and join with, the City in any petition or proceedings required for such vacation, dedication, change of grade, and, to the extent necessary, rezoning, and execute any waiver or other document in respect thereof.

(B) The City reserves for itself, the City, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities which may be located within the Property boundary lines.

(C) The Housing Company shall not construct any building or other structure or improvement on, over, or within, the boundary lines of any easement for public utilities, unless such construction is provided for in such easement or has been approved by the City. If approval for such construction is requested by the Housing Company, the City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

(D) Prior to the conveyance of the Property by the City to the Housing Company, the City shall permit representatives of the Housing Company to have access to any part of the Property as to which the City holds title, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out the Agreement. After the conveyance of the Property by the City to the Housing Company, the Housing Company shall permit the representatives of the City, and the United States of America access to the property at all reasonable times which any of them deems necessary for the purposes of the Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Paragraph.

(E) In connection with the construction of the Project, the Housing Company, without expense to the City, shall install and construct all sidewalks within the Housing Site but as to peripheral streets this obligation shall be limited to the side of the street or streets abutting the Housing Site.

206. If required by the general plan, the IDA shall initiate, within a period of thirty (30) days from the date of execution and delivery of this Agreement, proceedings to zone and rezone the area in the City within which the Project is located, and the areas adjacent thereto, in such manner as may be practicable and suitable for operation of the Project and consistent with the Urban Renewal Plan and the Project Plan.

ARTICLE III

EQUAL EMPLOYMENT OPPORTUNITIES
UNDER FEDERAL AND STATE LAWS

301. The authorized representatives of the City and Federal Government shall be permitted to inspect the activities of the Housing Company in connection with construction of all new buildings and improvements under this Agreement and the Housing Company shall also permit the inspection by such authorized representatives of such payrolls and related records pertaining to the foregoing activities.

302. The Housing Company, for itself, and its successors and assigns, agrees that in the construction of the improvements in accordance with the provisions of this Agreement:

(a) The Housing Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Housing Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Housing Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(b) The Housing Company will, in all solicitations or advertisements for employees placed by or on behalf of the Housing Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Housing Company will send to each labor union or representative of workers with which the Housing Company has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the City, advising the said labor union or workers' representative of the Housing Company's commitments under Section 202 of Executive Order No. 11246, of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Housing Company will comply with all provisions of Executive Order No. 11246 of September 24, 1965, of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Housing Company will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Housing Company's books, records and accounts by the City, the Secretary of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Housing Company's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or part and the Housing Company may be declared ineligible for further Government Contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

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(b) The Housing Company will include the provisions of Paragraphs (a) through (g) of this Paragraph 302 in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. The Housing Company will take such action with respect to any construction contract, subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for non-compliance: PROVIDED, HOWEVER, that in the event the Housing Company becomes involved in, or is threatened with, litigation with a contractor, subcontractor as a result of such direction by the City, the Housing Company may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract or purchase order, as required hereby the first three lines of this Section shall be changed to read 'During the performance of this agreement, the Contractor agrees as follows" and the term "Housing Company" shall be changed to "Contractor".

303. During the performance of this Agreement, the Housing Company agrees as follows:

(a) The Housing Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color or national origin. Such action shall be taken with reference to, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) The Housing Company will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the Housing Company's agreement under clauses (a) through (h) of this Paragraph 303 (hereinafter called "non-discrimination clauses"). If the Housing Company was directed to do so by the City as part of the bid or negotiation of this contract, the Housing Company shall request such labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, color, religion, sex or national origin, and that such labor union or representative either will affirmatively cooperate within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Housing Company shall promptly notify the State Commission for Human Rights of such failure or refusal.

(c) The Housing Company will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) of this Paragraph 303 and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

(d) The Housing Company will state, in all solicitations or advertisements for employees placed by or on behalf of the Housing Company, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, color, religion, sex or national origin.

(e) The Housing Company will comply with the provisions of Sections 291-99 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to its books, records and accounts by the State Commission for Human Rights, the Attorney General, Municipality, Commissioner of Housing and Community Renewal and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This contract may be forwith cancelled, terminated or suspended, in whole or in part, by the City upon the basis of a finding made by the State Commission for Human Rights that the Housing Company has not complied with these non-discrimination clauses, and the Housing Company may be declared ineligible for future contracts made by or on behalf of the state, or a public authority or agency of the State or housing authority, or an urban renewal agency, or contracts requiring the approval of the Commissioner of Housing and Community Renewal, until it has satisfied the State Commission for Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Housing Company and an opportunity has been afforded it to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) If this contract is cancelled or terminated under clause (f) of this Paragraph 303, in addition to other rights of the City provided in this contract upon its breach by the Housing Company, the Housing Company will hold the City harmless against any additional expenses or costs incurred by the City in completing the work or in purchasing the services, materials, equipment or supplies contemplated by this contract, and the City may withhold payments from the Housing Company in an amount sufficient for this purpose and recourse may be had against the surety on the performance bond if necessary.

(h) The Housing Company will include the provisions of clauses (a) through (g) of this Paragraph 303 in every contract, subcontract or purchase order altered only to reflect the proper identity of the parties in such a manner that such provisions will be binding upon each contractor, subcontractor or vendor as to operations to be performed within the State of New York. The Housing Company will take such action in enforcing such provisions of such contract, subcontract or purchase order as the City may direct, including sanctions or remedies for non-compliance. If the Housing Company becomes involved in or is threatened with litigation with a contractor, subcontractor or vendor as a result of such direction by the City, the Housing Company shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

304. ADVERTISING. The Housing Company agrees for itself, its successors and assigns that during construction and thereafter the Housing Company and its successors and assigns shall include in all advertising for the sale or rental of the Property, a statement to the effect (a) that the Property is open to all persons without discrimination on the basis of race, color, religion, sex or national origin and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public.

305. Equal Employment.

The Housing Company agrees to incorporate in any Construction Contract related to the Project, the following provisions:

A. (1.)

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that employees and applicants for employment are treated without regard to their race, creed, color or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the language of this nondiscrimination provision.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will be considered for employment without regard to race, creed, color or national origin.

(c) The contractor will send to each labor union or other representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the contractor's commitments under Section 2 of Executive Order No. 71 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order No. 71 and of the rules, regulations, and orders issued pursuant thereto.

(e) The contractor will furnish all information and reports required by Executive Order No. 71 and by such rules, regulations, and orders issued pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the City Administrator for purposes of investigation to ascertain compliance with this Executive Order and such rules, regulations and orders.

(f) If the contractor does not comply with the nondiscrimination provisions of this contract or with Executive Order No. 71 with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further city contracts in accordance with procedures authorized in Executive Order No. 71 and such other sanctions may be imposed and remedies invoked as are provided in this Executive Order, or by rule, regulation, or order issued pursuant thereto, or as otherwise provided by law.

(2)
The contractor will include the provisions of subsection a. (1) through (6) above in every subcontract or purchase order unless exempted by rules, regulations, or orders of the City Administrator issued pursuant to this Executive Order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the City of New York to enter into such litigation to protect the interests of the City of New York.

(3)
The provisions of this subsection A shall be deemed supplementary to, and not in lieu of, or in substitution for, the provisions of the New York State Labor Law relating to nondiscrimination, and other applicable Federal, State or City law, ordinance, rule, regulation and Executive Order.

B.
The contractor shall employ minority individuals for training level jobs and shall participate in an on-the-job training program for them, which is acceptable to the City of New York. The contractor shall make a good faith effort to achieve the goal of one trainee to every four journeymen of each craft. The contractor shall not transfer a trainee from an ongoing construction project to achieve the goal.

C.
The contractor shall participate in programs for rapid advancement to full journeyman pay scale for new minority employees who by training and experience can perform the duties of a qualified journeyman.

D.
The appropriate agencies, the unions, [illegible]

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ANNEX

The Housing Company agrees that in order to make it possible to convert the project to cooperative ownership it will do the following:

1. Each tenant will be informed at the time of occupancy of the goal of cooperative ownership when feasible and desired by the tenants.

2. On due notice to all tenants, six months after 95% of all apartments in the Project have been occupied, The Housing Company will hold a meeting of tenants, under the supervision of FHA to acquaint them with the cooperative concept and the goal of cooperative ownership.

3. The Housing Company will prepare and carry on an educational program to fully apprise the tenants of the responsibilities, obligations and advantages of cooperative ownership. Said programs shall be submitted to FHA, and FHA shall be the sole judge of its acceptability.

4. The sponsor shall ascertain at such intervals as may be established by FHA, the individual wishes of all the tenants with respect to cooperative ownership. The Housing Company further agrees to advise FHA of the results of such vote forthwith.

5. Upon a determination by FHA that a substantial portion of the tenants wish to assume cooperative ownership and that conversion to cooperative ownership will not create undue hardship on any tenant, The Housing Company will proceed to convert the Project to cooperative ownership, utilizing such Federal, State and local resources as may be available.

ARTICLE IV

MORTGAGE UNDER SECTION 221 (d)(4) OF THE NATIONAL HOUSING ACT, TAX EXEMPTION, REGULATION OF CHARGES, RIGHT TO REFINANCE

401. The Housing Company has heretofore applied to the Agency pursuant to Section 221 (d)(3) or Section 236 of the National Housing Act, as amended, for insurance of a mortgage loan to finance the construction of the buildings on the Housing Site, and the parties hereto contemplate that such application will be approved, that the Agency will issue its usual commitment to the Housing Company, and that the buildings to be constructed on the Housing Site will comprise an Agency-aided cooperative housing project subject to the regulation of the HDA pursuant to appropriate provisions of law and the Agency under the provisions of Section 221 (d)(3) or Section 236 of the National Housing Act, as amended.

402. Pursuant to Section 577 of the Private Housing Finance Law, the City, acting by its Board of Estimate, agrees to and hereby exempts from local and municipal taxes, other than assessments for local improvements, for the period from the closing of the mortgage and delivery of deed until the date of issuance of the Temporary Certificate of Occupancy for the Project, or if the Project is constructed in stages, the date of issuance of the Temporary or Permanent Certificate of Occupancy, whichever may be earlier, for each stage all of the value of the property to be included in the completed Project. The City further agrees to and hereby exempts from local and municipal taxes, other than assessments for local improvements, all of the value of the real property to be included in the completed Project which exceeds the property value required to yield taxes the equivalent of ___ ½ _____ percentum (__%) of the annual shelter rent or carrying charges of the Project for the period commencing with the date of issuance of the Temporary Certificate of Occupancy for the Project, or if the Project is constructed in stages, from the date of issuance of the Temporary or Permanent Certificate of Occupancy, whichever may be earlier for each stage. The aforesaid tax exemptions are to operate and continue for so long as the Agency-insured mortgage is outstanding, but in no event for a period of more than forty (40) years commencing from the date on which the benefits of the aforesaid tax exemptions first become available and effective, that is, from the date of the closing of the mortgage. In a project processed under Section 221 (d)(3) of the National Housing Act, as amended, shelter rent means the total rents received from the occupants of a project less the cost of providing to the occupants electricity, gas, heat, and other utilities. In a project processed under Section 236 of the National Housing Act, as amended, shelter rent means the basic rent for the project as defined in that section, less the cost of providing to the occupants electricity, gas, heat, and other utilities.

403. The Housing Company represents and agrees that its purchase of the Housing Site, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of development of the Housing Site and not for speculation in land holding. The Housing Company further recognizes that, in view of

(a) the importance of the development of the Housing Site to the general welfare of the community; and

(b) the substantial financing and other public aids that have been made available by law and by the Federal and local government for the purpose of making such development possible;

the qualifications and identity of the Housing Company and its officers and directors, are of particular concern to the community and the City. The Housing Company further recognizes that it is because of such qualifications and identity that the City is entering into the Agreement with the Housing Company and, in so doing, is further willing to accept and rely on the obligations of the Housing Company for the faithful performance of all undertakings and covenants hereby by it to be performed.

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The Housing Company covenants and agrees that for the life of the mortgage it will promptly notify the HDA and the Agency in writing of any and all changes whatsoever in the membership of the Board of Directors or the officers, or the by-laws of the Housing Company, or with respect to the identity of the parties in control of the Housing Company or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. The Housing Company shall also submit to HDA at the time this agreement is executed, a certified copy of its by-laws approved by HDA, which by-laws shall not be changed or amended without the prior written consent of HDA.

The Housing Company shall, at such time or times as the HDA and the Agency may request, furnish the said HDA and the Agency with a complete statement, subscribed and sworn to by the Secretary of the Housing Company setting forth all of the officers and directors of the Housing Company, all as determined or indicated by the records of the Housing Company. Such lists, data and information shall in any event be furnished the HDA and the Agency immediately prior to the delivery of the deed to the Housing Company and as a condition precedent thereto and annually thereafter on the anniversary of the date of the deed.

With respect to this provision, the Housing Company and the parties signing the Agreement on behalf of the Housing Company represent that they have the authority of all of its existing officers and directors to agree to this provision on their behalf and to bind them with respect thereto.

404. Also, for the foregoing reasons the Housing Company represents and agrees for itself, and its successors and assigns, that:

a. Except only

1. by way of security for, and only for, (i) the purpose of obtaining financing necessary to enable the Housing Company or any successor in interest to the Housing Site, or any part thereof, to perform its obligations with respect to making the improvements under the Agreement, and (ii) any other purpose authorized by the Agreement, and

2. as to any individual parts or parcels of the Housing Site on which the improvements to be constructed thereon have been completed, and which, by the terms of the Agreement, the Housing Company is authorized to convey or lease as such improvements are completed.

The Housing Company (except as so authorized) has not made or created, and that it will not during the term of the mortgage make or create, or suffer to be made or create, any total or partial sale, assignment, conveyance, or lease or any trust or power, or transfer in any other mode or form, of or with respect to the Agreement or the Housing Site, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Board of Estimate:

b. The City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

1. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in the Agreement by the Housing Company (or, in the event the transfer is of or relates to part of the Housing Site, such obligations to the extent that they relate to such part).

2. The proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Housing Company under the Agreement and agreed to be subject to all the conditions and restrictions to which the Housing Company is subject (or, in the event the transfer is of or relates to part of the Housing Site, such obligations, conditions, and restrictions to the extent that they relate to such part); PROVIDED, That the fact that any transferee of, or any other successor in interest whatsoever to, the Housing Site, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Housing Site or the construction of the Improvements; it being the intent of this, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity and except only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change with respect to, ownership in the Housing Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the Housing Site and the construction of the Improvements that the City would have had, had there been no such transfer or change.

3. There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, its approval shall be indicated to the Housing Company in writing.

4. The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Housing Company of the Housing Site (or allocable to the part thereof or interest therein transferred) and the Improvements, if any, theretofore made thereon by it; it being the intent of this provision to preclude assignment of the Agreement or transfer of the Housing Site or any parts thereof (other than those referred to in Paragraph 404 (a)(2) for profit during the term of the mortgage and to provide that in the event any such assignment or transfer is made (and is not canceled), the City shall be entitled to increase the purchase price to the Housing Company by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this subdivision (4), and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the City.

5. The Housing Company and its transferee shall comply with such other conditions as the City may find desirable in order to achieve and safeguard the purposes of the Urban Renewal Law and the Urban Renewal Plan.

PROVIDED, That in the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Housing Company, or any other party bound in any way by the Agreement or otherwise with respect to the construction of the Improvements or the Housing Site, from its obligations with respect thereto.

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402. The Housing Company covenants and agrees that for the life of the mortgage insured by the Agency it will not place any other mortgage or encumbrance upon the Housing Site, or any part thereof, other than the mortgage insured by the Agency.

403. Except as otherwise provided in this Agreement, including particularly Paragraphs 403, 403A, 404 and 407 hereof, the Housing Company may not sell the real property in the Housing Site or any part thereof during the life of the mortgage.

407. The term "actual cost (including carrying charges)" as used in Paragraph 404 (D)(4) hereof is defined herein below in this Paragraph 407. In the event the Housing Company should desire to convey the Project during the term of the mortgage and the Board of Estimate and the UDA approve such conveyance, the consideration for such conveyance paid or payable to the Housing Company shall not exceed an amount representing the actual cost to the Housing Company of the property sold (including the cost of acquisition, carrying charges, the cost of any improvements thereon hereafter erected, and any other expenditures of the Housing Company which under recognized accounting practices are properly considered as actual costs to the Housing Company of the property sold) all as may be approved by the UDA. The intent and purpose of this Paragraph 407 is to preclude the Housing Company from making any profit resulting from conveyance of the Project during the term of the mortgage. In the event of any conveyance under this Paragraph 407 prior to completion of the project the grantee shall be required to assume all of the obligations of the Housing Company under this Agreement. Such grantee must be a Housing Development Fund Company organized pursuant to Article XI of the Private Housing Finance Law, which is financially able to proceed with the Project in accordance with this Agreement and the Urban Renewal and Project Plans.

403. a. Nothing expressed in or to be implied from this Agreement is intended or shall be construed to prevent, foreclose or prohibit the Housing Company, at the expiration of the term of the mortgage from conveying the Project, pursuant to and subject to the provisions of Article XI of the Private Housing Finance Law, to a nonprofit organization, subject to the approval of the UDA and a Justice of the Supreme Court.

b. Nothing expressed in or to be implied from this Agreement is intended or shall be construed to prevent, foreclose or prohibit the Housing Company or any successor Housing Company, after said completion of the Project, from exercising any and all rights any said company may possess under any of the provisions of Article XI of the Private Housing Finance Law.

c. All of the provisions of this Agreement having to do with the conveyance of property, the manner and time permissible for such, including particularly Paragraph 403, 404, 405, 406 and 407 hereof, shall apply except only.

1. Nothing expressed in or to be implied from this Agreement is intended or shall be construed to prevent, foreclose or prohibit the Housing Company from using its interests in the property by way of security for, and only for, the purpose of obtaining financing necessary to enable the Housing Company or successor in interest to perform its obligations with respect to the improvements under this Agreement.

2. Nor is there anything expressed or implied which is intended or shall be construed to prevent, foreclose or prohibit the Housing Company from exercising any rights with regard to any individual parts or parcels of the property on which the construction of the improvements thereon have been completed, and which by the terms of this Agreement the Housing Company is authorized to convey or lease such improvements are completed.

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409. a. Former residential tenants on the site of this Project, site tenants in other Urban Renewal Projects, and site tenants displaced by public action in the City shall, without discrimination because of race, color, creed or national origin or ancestry, be given preference in the completed Project, provided such tenants meet and comply with all of the Housing Company's uniform requirements, and the Agency's requirements as to eligibility and otherwise, affecting all tenants, and shall make written application to the Housing Company therefore within ninety (90) days after approval of the rent schedules by the Agency, or the execution of this Agreement, whichever shall be later. All such applications for apartments shall be submitted to the HDA for review and approval to assure such preferences.

Former retail commercial tenants and occupants on the site of the Project shall be given preference in the retail commercial space in the Project, provided such retail commercial tenants and occupants meet and comply with all of the Housing Company's requirements and the Agency's requirements as to the use of the premises, amount of rentals and security deposits, financial responsibility and otherwise affecting all retail commercial tenants and shall make written application to the Housing Company therefore not later than ninety (90) days after execution and delivery of this Agreement to the Housing Company. All such applications for commercial space shall be submitted to the HDA for review and approval to assure such preferences.

409. b. The dwelling units in the Project shall be available for persons or families of low income or moderate income as required by the Agency for its Section 221(d)(3) Below Market Interest Rate, or Section 236 Projects or as the same may be modified from time to time by the Agency.

409.c. In the event that the income of a person or family shall exceed six times the adjusted market rent for a family of three persons or less or seven times the adjusted market rent for a family of four or more persons, such person shall be subject to a surcharge in the amount hereinafter provided in each month during such period of excess income during the period of tax exemption hereinabove provided.

Adjusted market rent is the rent that would be required if the mortgage interest were at the maximum insurable market rate in effect at the time of closing of the mortgage, and the Agency had not waived its normal mortgage insurance premium in the case of a Section 221 (d)(3) project or the rent that would be required if interest reduction payments were not being made in the case of a Section 236 Project. The aforesaid surcharges, which shall be in addition to, and apart from any surcharges provided for in any regulatory agreement between the Housing Company and the Agency, shall be paid by the family failing in said annual account, and shall be paid by the Housing Company to the City annually.

Persons or families whose aggregate annual income shall exceed the maximum permissible income hereinabove specified shall be required to pay a surcharge calculated as a percentage of the adjusted market rent as follows:

Aggregate Annual Income	Surcharge - Percentage of Adjusted Market Rent
In excess of 100% up to 105% of Maximum Permissible Income	0
In excess of 105% up to 110 of Maximum Permissible Income	2.5%
In excess of 110% up to 115% of Maximum Permissible Income	5.0%
In excess of 115% up to 120% of Maximum Permissible Income	7.5%
In excess of 120% up to 125% of Maximum Permissible Income	10.0%
In excess of 125% up to 130% of Maximum Permissible Income	12.5%
In excess of 130% up to 135% of Maximum Permissible Income	15.0%
In excess of 135% up to 140% of Maximum Permissible Income	17.5%
In excess of 140% up to 145% of Maximum Permissible Income	20.0%
In excess of 145% up to 150% of Maximum Permissible Income	22.5%
In excess of 150% of Maximum Permissible Income	25.0%

In the event that, at the end of a calendar year, only a portion of such year shall have been included in the term of occupancy of a tenant, then the annual income and rental shall be computed proportionately in determining whether the annual income exceeded such maximum for such year.

Notwithstanding any provision to the contrary, the surcharge referred to herein shall not exceed the proportional share of such tenant of the tax exemption received in such year by the Project for the City of New York. "The tax exemption received by the Project", as used herein, shall mean the amount by which the real estate taxes which would have been payable by the Project during such year in the absence of any provision for tax exemption shall exceed the real estate taxes payable by the Project pursuant to the provisions hereof. "Proportional share", as used herein, shall mean that fraction, of which the numerator is the number of rental rooms of the apartments of such tenant and the denominator is the total number of rental rooms in the Project.

Should any tenant fail or refuse to furnish the required data with respect to income within a reasonable time, he will be subject to the maximum surcharge provision.

CENTRAL RECORDS

503. The Housing Company shall not discriminate upon the basis of race, creed or national origin in the sale, lease, rental or in the use or occupancy of the Housing Site or any improvements erected or to be erected thereon or any part thereof.

501. It is hereby agreed that in the event any party hereto shall fail to comply with or violates any of the provisions of this Agreement, then and in that event any other party hereto may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of all damages, expenses and costs.

502. It is agreed that subject to the provisions of this Agreement, including particularly Paragraph 203 hereof, (a) if the Housing Company shall fail to complete construction of the improvements on the Housing Site, as said completion is defined in Paragraph 203 hereof, in the time provided for said completion as such time may be extended, all as provided in this Agreement, or (b) if the Housing Company, prior to said completion of construction, shall fail to perform any obligation hereunder that is required to be performed by it prior to said completion of construction, or (c) if the Housing Company shall fail to pay, prior to said completion of construction, real estate taxes, assessments, water and sewer rents, and any such failures shall not be cured within sixty (60) days (except that in respect to the nonpayment of taxes, assessments, water and sewer rents and charges, the time shall be thirty (30) days after written notice of such failure is given to the Housing Company and to the holder of record of the Mortgage), then the Housing Company shall reconvey to the City, without consideration, by bargain and sale deed, all the real property conveyed to the Housing Company by the City with all improvements thereon, free and clear of all liens and encumbrances and mortgages, but subject to the Mortgage and its terms and conditions.

Provided, that such condition subsequent and any revesting of title as a result thereof in the City

(A) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages; and

(B) shall not apply to individual parts or parcels of the property (or, in the case of parts or parcels leased, the leasehold interest) on which the improvements to be constructed thereon have been completed in accordance with the Agreement and for which a certification of completion is issued therefor as provided in Section 203 (a)(2) hereof.

In the event that the Housing Company shall fail to reconvey as aforesaid, the City may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and acquire the fee title free and clear of all liens and encumbrances and mortgages subject only to the Mortgage and its terms and conditions and the payment of all damages, expenses and costs. The City may apply for and shall have the right to the appointment of a Receiver without notice in any such action or proceeding.

[illegible] the Mortgage [illegible] pay [illegible] and [illegible] the Mortgage in accordance with the Urban Renewal Project Plans, and the covenants contained in this Agreement upon giving written notice to the City and its intention to so complete within thirty (30) days after the expiration of the period given to the Housing Company hereunder to cure any default hereunder. Upon such completion the said holder of the Mortgage may notwithstanding any provisions of this Agreement to the contrary, if it has obtained the fee title to the real estate, sell the same only to a Housing Development Fund Company organized pursuant to Article XI of the Private Housing Finance Law and approved by HDA and assign the Mortgage to such company as if such company were the original mortgagee or may add such delinquent taxes, assessments, water and sewer charges advanced by it including such other costs and expenses which the Housing Company was obligated to pay and all costs and incidental expenses of the work done by it to its advances and lien of its Mortgage and continue to hold its Mortgage lien on said property.

Anything to the contrary notwithstanding, neither the Agency nor the holder of the Mortgage is in anywise obligated to complete the improvements contemplated in said Mortgage, and in case of any default in the construction of said improvements by the Housing Company, the Agency or the holder of the Mortgage shall have the option of completing, or not completing the improvements or causing the same to be completed.

Anything to the contrary notwithstanding, the holder of the Mortgage, may foreclose its Mortgage and, if it be, obtained a fee title to the real estate, sell the same to another Housing Development Fund Company organized pursuant to Article XI of the Private Housing Finance Law which will complete construction of the improvements contemplated in such Mortgage or arrange for the construction of such improvements, in accordance with the Urban Renewal and Project Plans and the covenants contained in this Agreement, except that the time for completion of construction as provided for in this Agreement may be extended by the HDA and the Agency for a reasonable period of time after said sale.

In the event the Housing Company reconveys to the City in accordance with the provisions of this Paragraph 502, the City shall resell the Housing Site reconveyed to the City, with the improvements thereon, subject to the Mortgage, as hereinafter provided in Paragraph 503 hereof. The proceeds of such resale shall be used first to reimburse the City for all costs and expenses incurred by the City, including salaries of City personnel in connection with the recapture and sale, and all taxes, assessments, water and sewer rent charges. Any remaining balance of such proceeds shall remain the property of the City as liquidated damages.

503. The Housing Company and the City agree that, in the event that the Housing Site shall be sold following the reconveyance thereof to the City the terms of such sale shall require that the purchaser of the Housing Site shall be only a Housing Development Fund Company organized under Article XI of the Private Housing Finance Law of the State of New York, which Company shall first be approved by the HDA and the Agency. The terms of any such sale shall further require that such Housing Development Fund Company shall assume all of the obligations of construction of all the improvements as provided in the Urban Renewal and Project Plans and in this Agreement, and in accordance therewith, except that the time for completion of such construction as provided in this Agreement shall be extended by the HDA for a reasonable period of time after such sale and shall assume the Mortgage and all other obligations of the Housing Company to the City, the Agency and the Mortgagee.

504. The Housing Company agrees for itself, and its successors and assigns, and every successor in interest to the Housing Site or any part thereof, and the deed shall contain covenants on the part of the Housing Company, for its self, and such successors and assigns, which covenants shall be covenants running with the land to effectuate the following:

[illegible] conveyed [illegible] any part thereof with and [illegible] to the uses specified in the Urban Renewal Plan contained in Schedule A of this Agreement and as said Plan may be revised from time to time. The said covenants is to run from the date of conveyance for a period of forty (40) years from the date of approval of the Urban Renewal Plan contained in Schedule A by the City of New York.

(b) Covenants that the grantee, its successors and assigns of the land conveyed or any part thereof and any lessee of the land conveyed or any part thereof shall comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color or national origin in the sale, lease, or occupancy of the Housing Site, or any improvements erected or to be erected thereon, or any part thereof.

(c) Covenants that the grantee, its successors and assigns of the land conveyed or any part thereof and any lessee of the land conveyed or any part thereof will not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease or rental or in the use of occupancy of the land conveyed or any part thereof or any improvements erected or to be erected thereon, or any part thereof.

505. Except as provided in Paragraphs 505-A, 505-B and 505-C, nothing expressed in or to be implied from this Agreement is intended or shall be construed to give any person, firm or corporation other than the parties hereto and the hold or holders of any mortgage authorized under this Agreement any legal or equitable right, remedy, or claim under this Agreement, or under any provision herein contained; this Agreement and all such provisions being for the sole and exclusive benefit of the parties hereto and the holder or holders of any mortgage authorized under this Agreement.

505-A. Notwithstanding any provision to the contrary contained in Paragraph 505 hereof, it is intended and agreed, and the deed shall so expressly provide, that the agreements and covenants provided in Paragraph 504 hereof shall be covenants running with the land and they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided for in this Agreement between the parties, be binding, to the fullest extent permitted by law and equity, for the benefit of and in favor, and enforceable by, the City and any successor in interest to the Housing Site, or any part thereof, and the owner of any other land (or of any interest in such land) in the Urban Renewal Area which is subject to the land use requirements and restrictions of the Urban Renewal Plan, against the grantee and its successors and assigns and every successor in interest to the Housing Site, or any part thereof or any interest therein, and any party in possession or occupancy of the Housing Site or any part thereof. It is further intended and agreed that the agreements and covenants provided in Paragraph 504, subdivision (a) hereof, shall remain in effect for the period of time stated therein (at which time such agreements and covenants shall terminate) and that the agreements and covenants provided in Paragraph 504, subdivisions (b) and (c) hereof shall remain in effect without limitation as to time; PROVIDED, That such agreements and covenants shall be binding on the Housing Company itself, each successor in interest to the Housing Site, and every part thereof, and each party in possession or occupancy, respectively, only for such period as that successor or party shall have title to, or any interest in, or possession or occupancy of, the Housing Site or any part thereof. The terms "uses specified in the Urban Renewal Plan" and "land use" referring to provisions of the Urban Renewal Plan, or similar language in this Agreement shall include the land and all building, housing and other requirements or restrictions of the Urban Renewal Plan pertaining to such land.

505-B. Notwithstanding any provision to the contrary contained in Paragraph 505 hereof, and in amplification, and not in restriction of, the provisions thereof, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in said subdivisions (a), (b) and (c) of Paragraph 504 hereof, both for and in its own right and also for the purpose of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided.

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such agreements and covenants shall (and the deed of conveyance shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant provided in subdivisions (a), (b) and (c) of Paragraph 504 hereof to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenants, to which it or any other beneficiaries of such agreement or covenant may be entitled.

505-C. Any deed of conveyance executed by the City in pursuance of this Agreement shall, in addition to any other provisions and covenants, contain covenants on the part of the grantee for itself, its successors and assigns of the land conveyed or any part thereof, which covenants shall be covenants running with the land, to effectuate the following:

(1) A covenant that the grantee, its successors and assigns of the land conveyed or any part thereof and any lessee of the land conveyed or any part thereof will not discriminate against any person because of the race, color, religion, national origin or ancestry of such person in the sale, lease or rental or in the use of occupancy of the land conveyed or any part thereof or any improvements erected or to be erected thereon, or any part thereof, as provided by State law.

(2) Notwithstanding any provision to the contrary contained in Paragraph 505 hereof, it is intended and agreed, and the deed shall so expressly provide, that the agreements and covenants provided in Paragraph 505-C (1) hereof shall be covenant running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided for in this Agreement between the parties, be binding, to the fullest extent permitted by law and equity, for the benefit of and in favor of, and enforceable by, the City and any successor in interest to the Housing Site, or any part thereof, and the owner of any other land (or of any interest in such land) in the Urban Renewal Area which is subject to the land use requirements and restrictions of the Urban Renewal Plan against the grantee, and its successors and assigns and every successor in interest to the Housing Site, or any part thereof or any interest therein, and any party in possession or occupancy of the Housing Site or any part thereof. It is further intended and agreed that the agreements and covenants provided in Paragraph 505-C, subdivision (1) hereof shall remain in effect without limitation as to time; PROVIDED, That such agreements and covenants shall be binding on the Housing Company itself, each successor in interest to the Housing Site, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Housing Site or part thereof. The terms "uses specified in the Urban Renewal Plan" and "land uses" referring to provisions of the Urban Renewal Plan, or similar language, in this Agreement shall include the land and building, housing and other requirements or restrictions of the Urban Renewal Plan pertaining to such land.

(3) Notwithstanding any provision to the contrary contained in Paragraph 505 hereof, and in amplification, and not in restriction of the provisions thereof, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in said subdivision (1) of Paragraph 505-C hereof, both for and in its own right and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the deed of conveyance shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

The City shall have the right, in the event of any breach of any such agreement or covenant provided in subdivision (1) of Paragraph 506-C hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

506. It is expressly understood and agreed, notwithstanding anything to the contrary in this Agreement, that no person, firm, corporation, partner, associate, member, official or employee thereof (hereinafter in this Paragraph 506 collectively called "persons") presently or formerly employed by the City on any planning and/or execution activities or services pertaining to the Urban Renewal Area has any interest in the Housing Company or will be permitted to acquire any such interest. No such person will be employed by the Housing Company until any and all contractual obligations, duties or responsibilities owing to the City have been fully discharged as shall be determined in writing by the [illegible]. Any person employed by the Housing Company or any planning and/or execution activities or services pertaining to the Area may not be employed by the City in connection with any matter pertaining to this Agreement.

507. This Agreement shall inure to the benefit of and be binding upon any successor of any party hereto, but this provision shall not operate to permit any assignment or any voluntary transfer of any of the rights created hereunder except in such manner as may be expressly permitted by this Agreement and Article XI of the Private Housing Finance Law.

508. None of the provisions of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Disposition Area from the City to the Housing Company or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement. The City of New York shall cause this Agreement to be recorded and at any time before or after such recording, upon the request of the City, the Housing Company shall pay to the City the cost if any of such recording.

509. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all collectively shall constitute but one instrument.

510. A notice or communication sent by either party to the other hereunder shall be sent by registered mail, return receipt requested addressed as follows:

(a) When sent by the City to the Housing Company, it shall be addressed to Grace Housing Development Fund Company, Inc.
c/o Harmon Engineering, 225 Broadway
New York, New York

(b) When sent by the Housing Company to the City, it shall be addressed to the Housing and Development Administration at 100 Gold Street, New York, New York; or addressed to such other address as in respect to either party as that party may designate in writing.

511. The parties to this Agreement may alter, amend, modify or delete any terms, covenants or conditions contained in (a) this Agreement; (b) any deed of conveyance; (c) any note, bond or mortgage made pursuant to this Agreement; and (d) the Project Plan or Urban Renewal Plan for the Project; with or without consideration as the board or bodies may determine and approve. However, the written consent of the Agency and of any holder of any note, bond or mortgage on the Disposition Site shall be required for [illegible] to the deed of conveyance [illegible] Urban Renewal Plan.

512. The [illegible] Administrator or any authorized Deputy Administrator, hereby is authorized to execute and deliver such certificates, with respect to the performance by the Housing Company of its obligations under this Agreement as may be requested by the Housing Company.

...of the City of ... [illegible] ...
...[illegible] ... of the Agreement or of the interest of any corporation, partnership or association in which he is directly or indirectly interested; provided, however, that nothing herein shall prevent such member, official or employee of the Housing Company from owning stock in and/or obligations (if bonds, debentures to be issued) of the Housing Company or acting as an officer or director of the Housing Company with the understanding that no compensation shall be paid such member, official or employee of the City for acting in the capacity of an officer or director of the Housing Company and that no income or dividends shall be paid to any such member, official or employee by the Housing Company unless said payment of income or of dividends as first approved by the City, with the further understanding that no compensation shall be paid to any corporation, partnership, association, firm or business in which he is interested or associated as an officer, director, stockholder, partner, or owner from which he is receiving or is to receive any compensation or dividends.

SIC. Reference contained throughout this Agreement to Article XI of the Private Housing Finance Law shall mean the Housing Development Fund Companies Law.

SID. Any titles of the several parts, Articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

IN WITNESS WHEREOF, The City of New York, acting by its Board of Estimate has caused its corporate seal to be hereunto affixed and duly attested and this Agreement to be signed by its Mayor or Deputy thereof, and

has caused its corporate seal to be hereunto affixed and duly attested, and this Agreement to be signed by its President and attested by its Secretary as of the day and year first above written.

THE CITY OF NEW YORK

By: Richard H. Amelio
DEPUTY MAYOR

Attest:
City Clerk

Attest:
Secretary

Approved as to Form:
Acting Corporation Counsel

Jane Housing Development Fund Corporation

By: [illegible]
President

REEL 2023 FRAME 1024

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 9th day of December 1970, before me personally came RICHARD R. AURELIO, to me known to be the ~~------~~ (Deputy Mayor) of The City of New York, and the same person who executed the foregoing instrument, and he acknowledged that he executed the foregoing instrument on behalf of The City of New York as said ~~------~~ (Deputy Mayor) and pursuant to the authority vested in him by resolution of the Board of Estimate adopted , Calendar No.

William J. Kelly
Notary Public

WILLIAM J. KELLY
Notary Public, State of New York
No. 31-4563751
Qualified in New York County
Term Expires March 30, 1971

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 10th day of December, 1970, before me personally came Herman Katz, with whom I am personally acquainted who, being by me duly sworn, did depose and say that he resides at 308 East 79 Street, N.Y., N.Y. 10021 that he is the City Clerk of The City of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed as provided by law, and that he signed his name thereto by like authority.

Lillie Zmuda
Notary Public

LILLIE ZMUDA
Commissioner of Deeds, City of New York
No. 1811
Certificate filed in New York County
Commission Expires October 31, 1971

STATE OF NEW YORK)
) ss:
COUNTY OF NY)

On the 23 day of Nov, 1970, before me came Jack Underhill to me known, who, being by me duly sworn, did depose and say that he resides at 53 W. 9th St. NY; that he is the President of the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Barney Lovenden
Notary Public

BARNEY LOVENDEN
Notary Public, State of New York
No. 31-[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1972

REEL 453 PAGE 1646

[illegible]

[illegible] HOUSING
STATE OF NEW YORK, [illegible]
GRACE BAPTIST CHURCH HOUSING CORPORATION, INC.

LOCATION: Site 32 - on the block front bounded by Pennsylvania, Sheffield, Pitkin and Belmont Avenues including lots 1 - 11, 14, 22, 24, 26, 27, - 32, 34, 35 and 38. On tax block 3750 bounded by Sheffield and Pitkin Avenues including lot 13.

SPONSOR: Grace Baptist Church
473 Vermont Avenue
Brooklyn, New York

ARCHITECT: Roger Glasgow
13 East 16th Street
New York, New York

ATTORNEY: Melvin Katz, Esq.
1522 Pacific Avenue
Brooklyn, New York

PUBLIC CONSULTANT: Farrow Rosenstein, Esq.
225 Broadway
New York, New York 10007

GENERAL DESCRIPTION: The East New York Section of the Central Brooklyn Community Development Plan calls for rehabilitation and new construction of housing and community facilities as the first phase of an on-going neighborhood re-improvement program under the Model Cities Program. The community represented by the East New York Physical Planning Committee actively participated in developing the plan and now wishes the above named sponsors to develop Site 32 as a new construction project.

BANK: ~~East New York Savings Bank~~ Fostar Fr.

MORTGAGE INSURANCE: A 40 year mortgage under Section 221(d)(3) or 236 of the National Housing Act.

RENTS: A six-story concrete plank building with:

36 - 1 BR		$110.00
84 - 2 BR		162.64
36 - 3 BR		194.87
12 - 4 BR		219.85

AVERAGE RENT PER MONTH: $138.40

FHA 453-1847

Exhibit A

Boundary Description

Site 7, East New York
Urban Renewal Area (Revised)

All those plots, pieces or parcels of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, more particularly described as follows:

Block 3772 Lot 15

BEGINNING at the southeasterly corner of Pitkin Avenue and Sheffield Avenue;

THENCE, easterly along the southerly side of Pitkin Avenue 100 feet;

THENCE, southerly on a line parallel with Sheffield Avenue 100 feet;

THENCE, westerly part of the way with Pitkin Avenue 100 feet to the westerly side of Sheffield Avenue;

AND THENCE, northerly along the westerly side of Sheffield Avenue 100 feet to the point or place of BEGINNING.

Block 3772

BEGINNING at the northeasterly corner of Belmont Avenue and Sheffield Avenue;

THENCE, northerly along the easterly side of Sheffield Avenue 400 feet to the southerly side of Pitkin Avenue;

THENCE, easterly along the southerly side of Pitkin Avenue 200 feet to the westerly side of Pennsylvania Avenue;

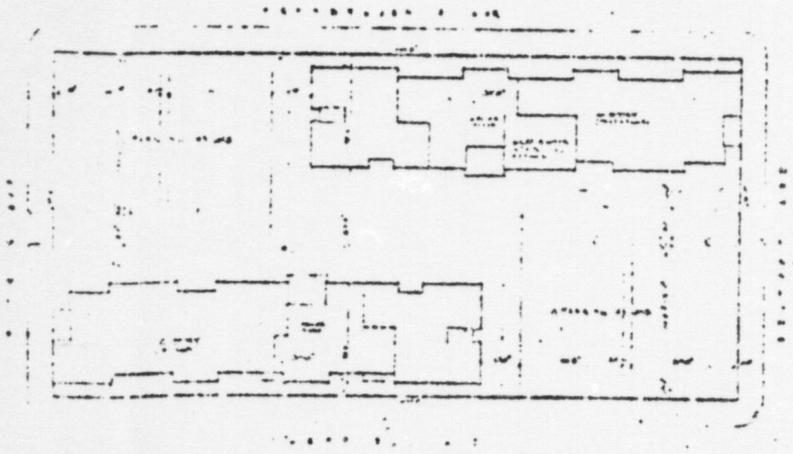
AND THENCE, southerly along the westerly side of Pennsylvania Avenue 400 feet to the northerly side of Belmont Avenue;

AND THENCE, westerly along the northerly side of Belmont Avenue 200 feet to the point or place of BEGINNING.

REL 453 PAGE 1648

SITE 32

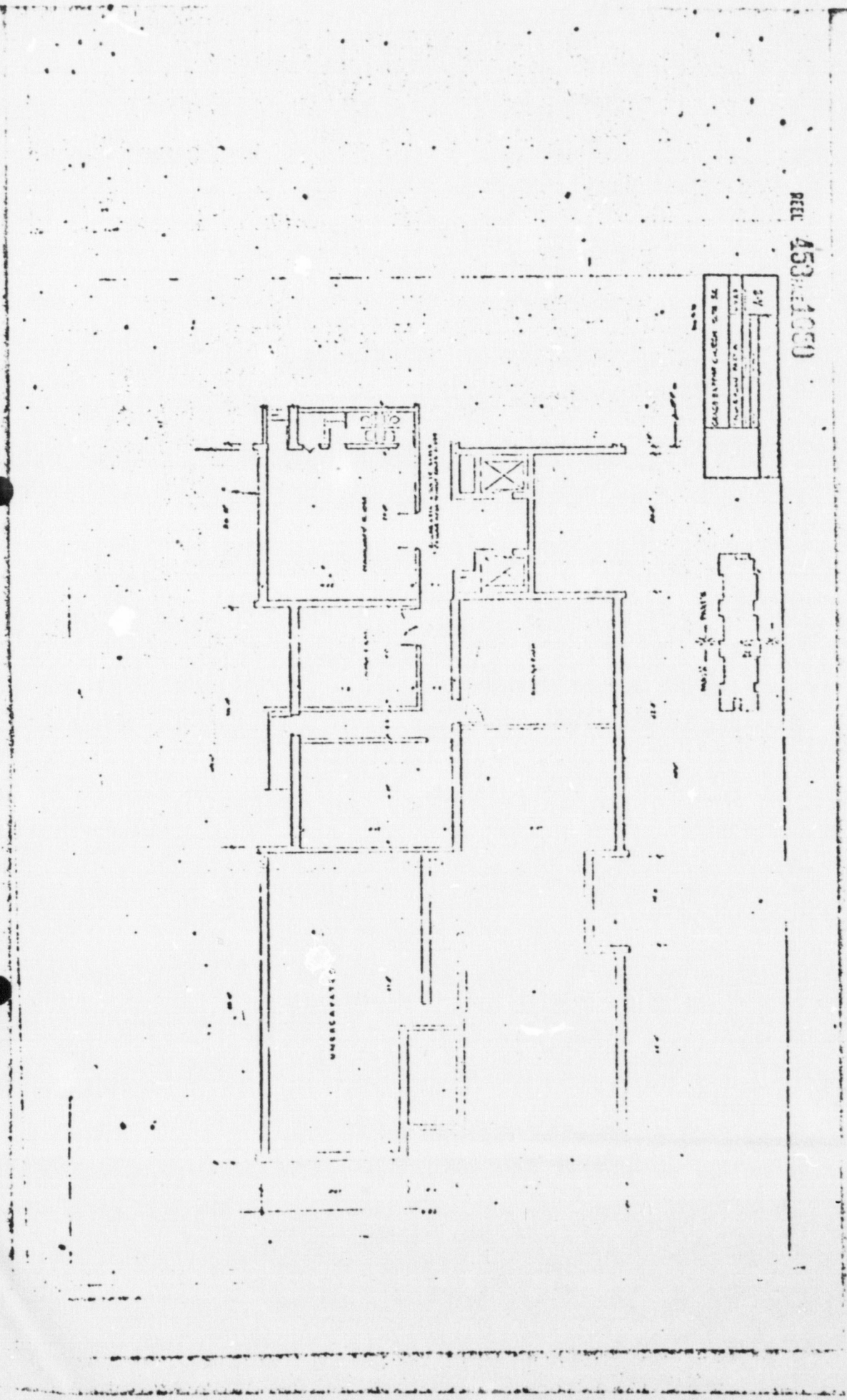
PRELIMINARY

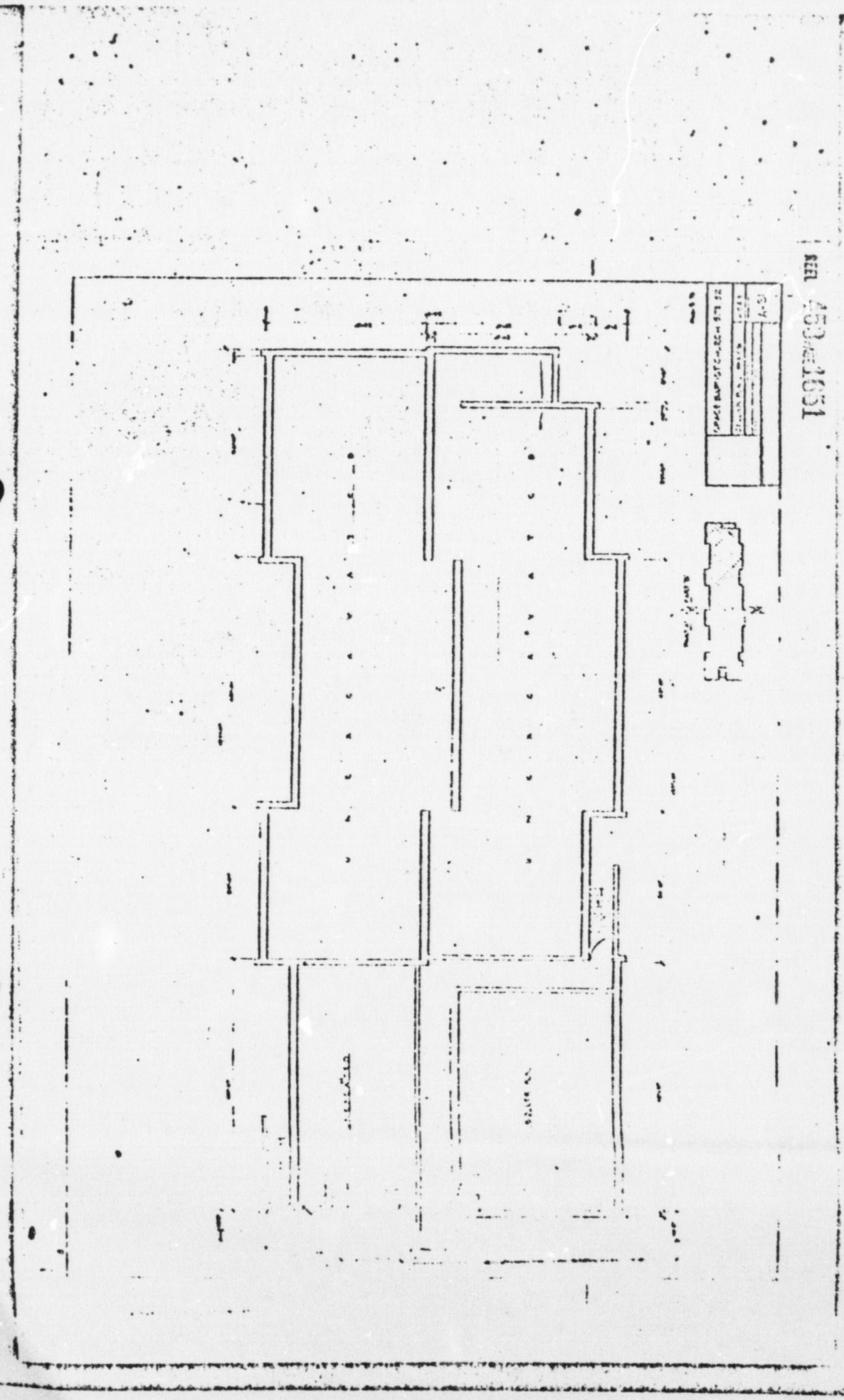


REC 453 PAGE 1649

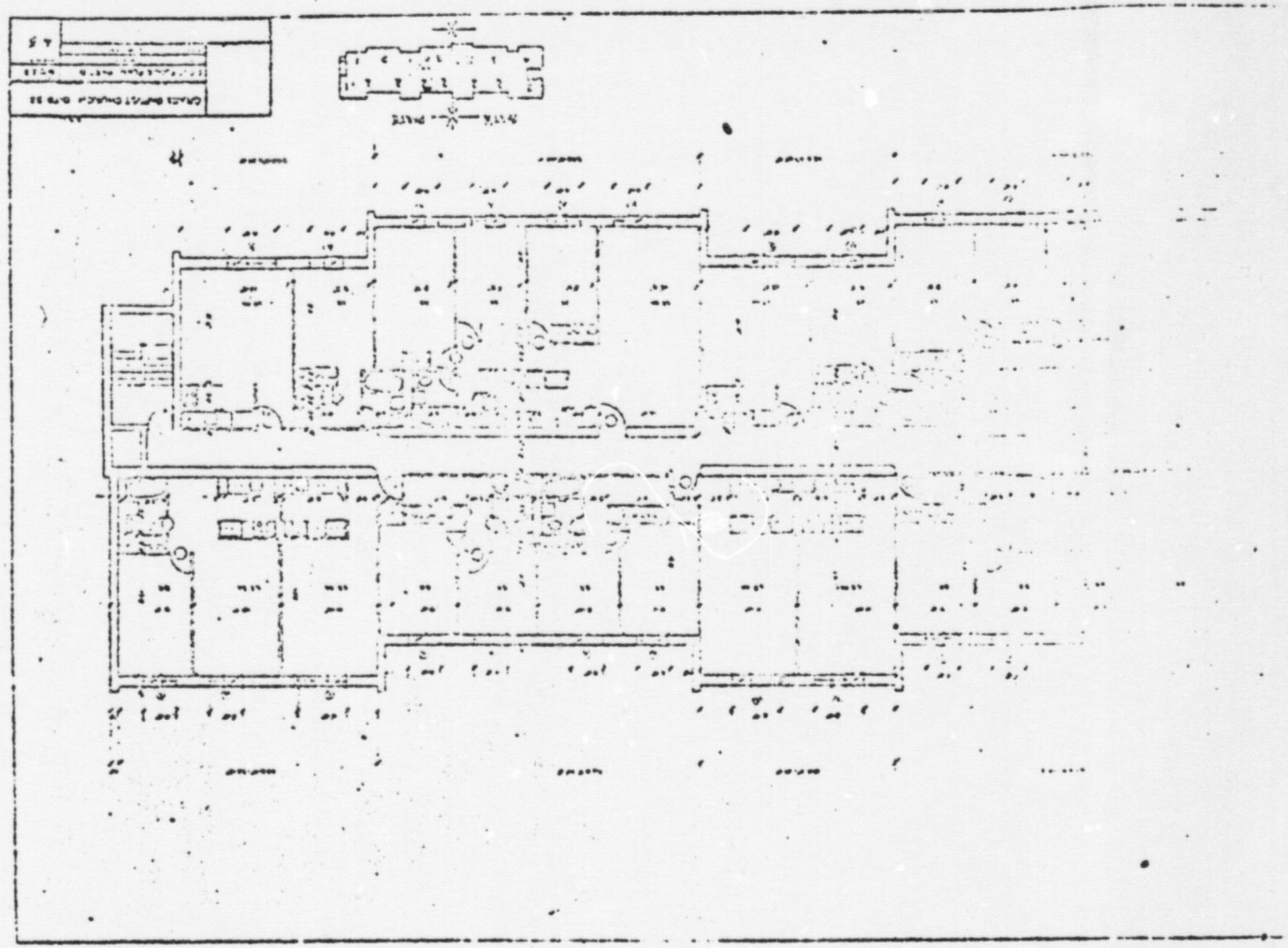
542

231



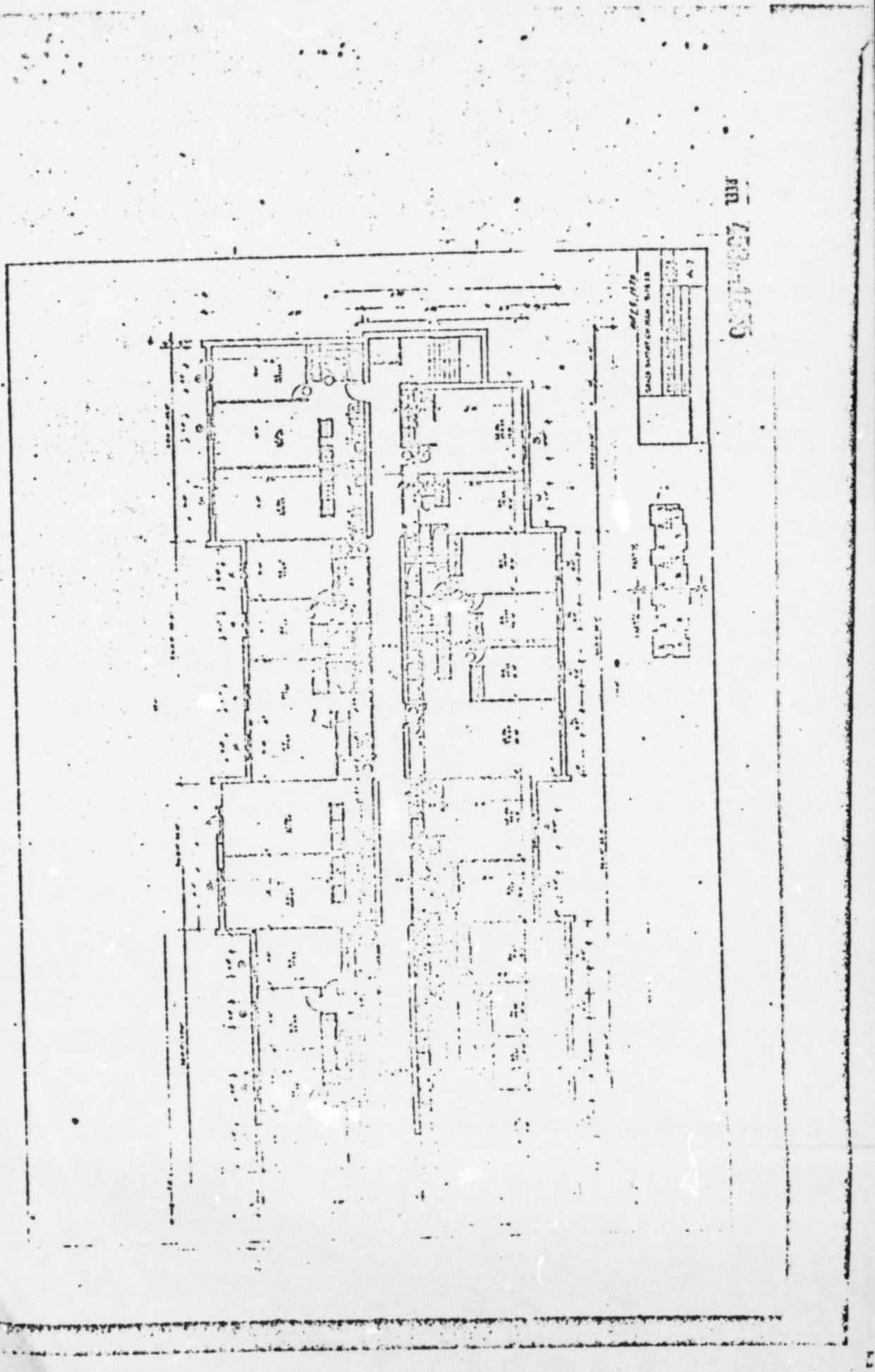


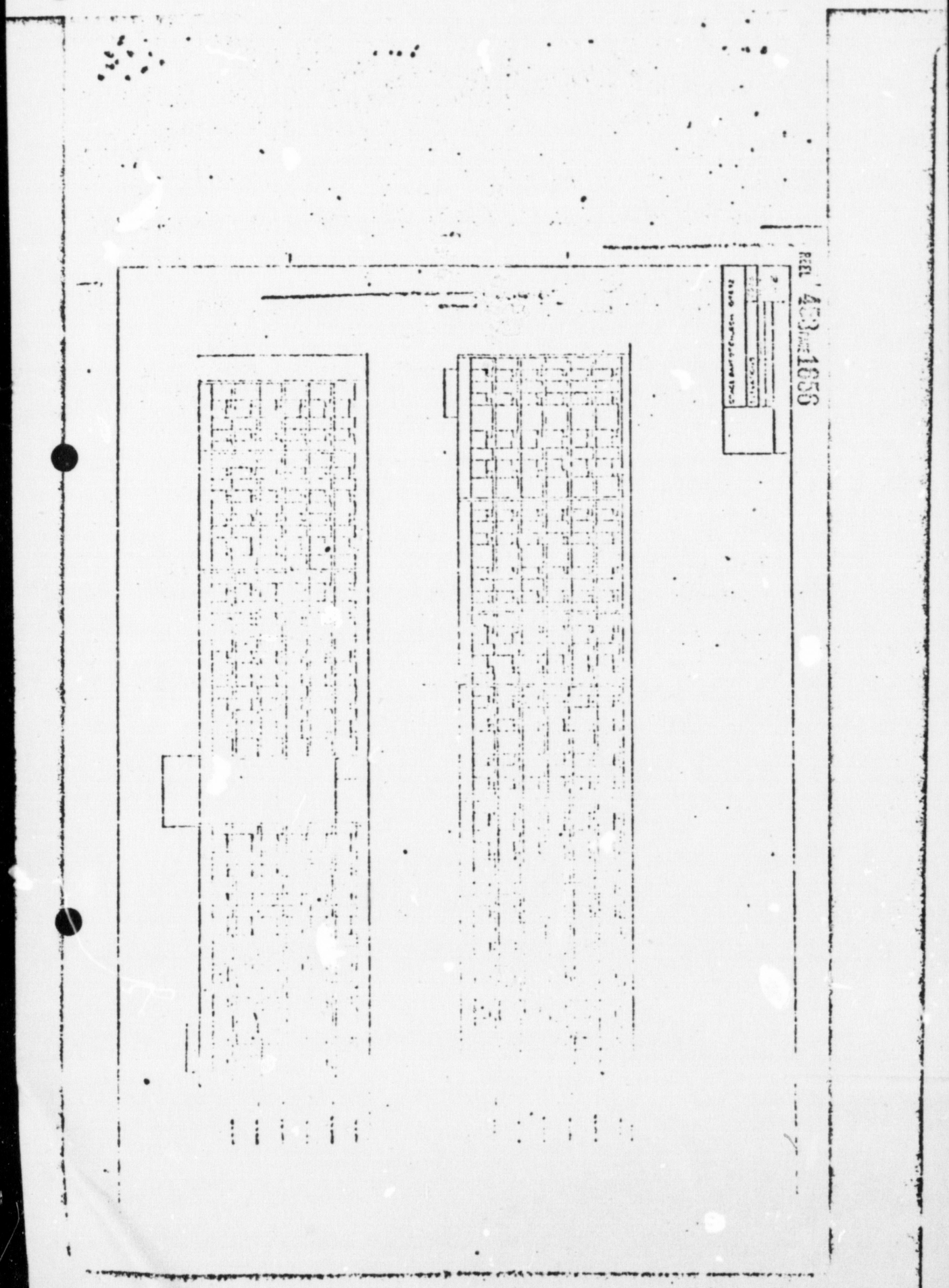
REEL 453 IMG 1053



235

247




BEL 63-1059

REEL 453 PAGE 1057

AGREEMENT

Between

THE CITY OF NEW YORK

And

GRACE HOUSING DEVELOPMENT FUND COMPANY, Inc.

OFFICE OF CITY REGISTER
Kings County
RECORDED
Witness my hand
and official seal
CITY REGISTER

The land affected by the within instrument lies in Section 12 Block 3726 Lot 18; and in Section 12 Block 3757 Lots 38 and 1 through 11 inclusive on the Tax Map of the County of Kings.

2 Blocks

-14-23-24-
25-27

46691

1970 DEC 17 AM 11:22

From Royal ABSTRACT CORP.
280 Broadway New York, N. Y. 10007
TITLE REPORTS AND POLICIES
ALL COUNTIES

X-6-22M-321033(73) 346

№ 9804

STATE OF NEW YORK,
COUNTY OF KINGS .

I hereby certify that the annexed is a true copy of an instrument made by
CITY OF NEW YORK with
GRACE HOUSING DEVELOPMERT FUND COMPANY., INC.
recorded in the office of the New York City Register KINGS County on the 17TH
day of DECEMBER 19 70 at 11:22 A M, in Section Block 3736
Liber/Reel 453 of REELS Page 1618

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal,
this 3RD day of OCTOBER 19 74

Matthew P. Lenyan
City Register

CITY OF NEW YORK

to

GRACE HOUSING DEVELOPMENT
FUND COMPANY, INC.

CERTIFIED COPY

CITY OF NEW YORK
FINANCE ADMINISTRATION
OFFICE OF THE CITY REGISTER
KINGS County,

Charges $ 40.00

Application No. 367929

Prepared by M.T.

For THOMAS N. ROTHSCHILD

Address 503 PENNSYLVANIA AVE.

B'KLYN, N.Y. 1[illegible]07

241

255

EXHIBIT 2

THIS INDENTURE made the 11th day of December, in the year One Thousand Nine Hundred and Seventy between THE CITY OF NEW YORK, a municipal corporation, having its principal office at the City Hall, Borough of Manhattan, City and State of New York, hereinafter referred to as the party of the first part, and GRACE HOUSING DEVELOPMENT FUND COMPANY, Inc., a corporation duly organized pursuant to the provisions of Article XI of the Private Housing Finance Law of the State of New York, as amended (otherwise known as the Housing Development Fund Companies Law) having its principal place of business at 475 Vermont Street, Brooklyn, New York, 11207, hereinafter referred to as the party of the second part.

WHEREAS, The Board of Estimate of The City of New York by resolution adopted on the 20th day of August, 1970 (Calendar No.11) duly ordered and directed the sale of the premises (hereinafter described as the "Disposition Area") for the negotiated price of Eighty-Four Thousand and no/100 ($84,000.00) Dollars; and;

WHEREAS, the agreement between the party of the first part and the party of the second part, dated as of August 20, 1970, hereinafter referred to as the "Agreement" provided for the sale of the "Disposition Area" for the negotiated price of Eighty-four Thousand and no/100 ($84,000.00) Dollars; and

WHEREAS, said premises were sold by and under the direction of the Commissioner of Real Estate on the 11th day of December, 1970 at Room 2000, 2 Lafayette Street, Borough of Manhattan, City of New York, for the sum of Eighty-four thousand and no/100 ($84,000.00) Dollars;

NOW, THEREFORE, WITNESSETH: That the party of the first part, in consideration of the sum of Eighty-four Thousand and no/100 ($84,000.00) Dollars; of the United States and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever:

1

REAL ESTATE TRANSFER TAX STATE OF NEW YORK

DESCRIPTION

ALL THAT CERTAIN lot, piece or parcels of land with the buildings and improvements thereon erected, situated, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BL 3737
LOTS 1 14
2 23
3 24
4 25
5 27
6 38
7
8
9
10
11

BEGINNING at the intersection of the westerly side of Pennsylvania Avenue with the southerly side of Pitkin Avenue; thence southerly along the westerly side of Pennsylvania Avenue 400' to the northerly side of Belmont Avenue; thence westerly along the northerly side of Belmont Avenue 200' to the easterly side of Sheffield Avenue; thence northerly along the easterly side of Sheffield Avenue 400' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 200' to the point or place of BEGINNING.

BL 3736
LOT 18

BEGINNING at the intersection of the southerly side of Pitkin Avenue with the westerly side of Sheffield Avenue; thence southerly along the westerly side of Sheffield Avenue 100'; thence westerly parallel with Pitkin Avenue 100'; thence northerly parallel with Sheffield Avenue 100' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 100' to the point or place of BEGINNING.

The parcels described above are known as Sites 32 and 32 addition of the Central Brooklyn Community Development Area.

mm 454pg 665

TO HAVE AND TO HOLD said premises herein granted unto the party of the second part, its successors and assigns forever.

Subject to:

1. Any state of facts an accurate survey will show.

2. All the terms, covenants and conditions of the Agreement entered into between the party of the first part and the party of the second part, dated as of August 20, 1970, and approved by the Board of Estimate on August 20, 1970 (Calendar No. 11), and intended to be recorded simultaneously herewith.

3. The trust fund provisions of Section 13 of the Lien Law of the State of New York.

The party of the second part, by the acceptance of this deed, covenants and agrees for and on behalf of itself, its successors and assigns, and every successor in interest to the land conveyed hereby or any party thereof, and any leases of the land conveyed or any part thereof, which covenants shall be covenants running with the land to effectuate the following:

(a) To undertake, commence and pursue the Project and to complete the same in accordance with the "Project Plan" contained in Schedule C of the Agreement subject to and limited by the provisions thereof.

(b) To devote the Disposition Area to and only to and in accordance with the uses specified in the Central Brooklyn Community Development Plan contained in Schedule A of the aforesaid Agreement, and as said Central Brooklyn Community Development Plan may be amended from time to time. The said covenant is to run for the duration of the controls of said Plan and expire on December 19, 2001.

(c) To comply with all Federal, State and Local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, sex or national origin in the sale, lease or occupancy of the Disposition Area or any part thereof.

REL 4541 PAGE 660

(d) To comply with all Federal, State and Local laws in effect from time to time regarding non-discrimination, and not discriminate upon the basis of race, religion, color, sex or national origin in the sale, lease or rental or in the use or occupancy of the land conveyed or any part thereof or any improvements erected or to be erected thereon or any part thereof.

The agreements, covenants and provisions heretofore provided in this INDENTURE and all agreements, covenants and provisions in the Agreement shall, as provided in accordance with the said Agreement, run in favor of, and be enforceable by, the party of the first part, the State of New York and the United States of America.

Notwithstanding the specific recital in this deed of certain of the covenants and agreements which are provided for in the Agreement, each and every covenant and each and every agreement contained in the Agreement shall not in any event or in any respect be merged with this deed but each and every covenant and agreement shall survive this grant and remain in full force and effect.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be subscribed to by the Commissioner of Real Estate and by the City Clerk, and its corporate seal to be hereunto affixed the day and year first above written.

THE CITY OF NEW YORK

By _____
Commissioner of Real Estate

By _____
City Clerk

APPROVED AS TO FORM:

_____
Acting Corporation Counsel

REL 454 PAGE 667

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
CITY OF NEW YORK)

On this 11th day of December, 1930 before me personally came HERMAN KATZ with whom I am personally acquainted, and known to me to be the City Clerk of The City of New York, who being by me duly sworn, did depose and say that he resides at 308 East 79th Street, in the Borough of Manhattan, City of New York; that he is the City Clerk of The City of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed as provided by law, and that he signed his name thereto as City Clerk by like authority, and further that he knows and is acquainted with IRA DUCHAN, and knows him to be the person described in and who, as Commissioner of Real Estate of The City of New York, executed the said instrument; that he executed the said instrument pursuant to law; that he saw him subscribe and execute the same, and that he acknowledged to him, the said HERMAN KATZ that he executed the same, and he, the said HERMAN KATZ thereupon subscribed his name thereto.

Abraham R. Olsen

Notary Public
Qualified in
Commission Expires March 30, 1932

REL 454 PAGE 698

BOARD OF ESTIMATE
CITY OF NEW YORK

(Cal. No. 11)

Whereas, The Board of Estimate on the 19th Day of December, 1968 (Cal. No. 9-A), approved the Central Brooklyn Community Development Area (also referred to as "Urban Renewal Plan") pursuant to Article 15 of the General Municipal Law, as amended; and on the 21st day of August, 1969 (Cal. No. 7), and the 25th day of September, 1969 (Cal. No. 10), approved the changes to said Plan; and

Whereas, Grace Housing Development Fund Company, Inc. has been duly organized as a housing development fund company under Article XI of the Private Housing Finance Law of the State of New York for the purpose of undertaking the redevelopment of a portion of the Central Brooklyn Community Development Plan Area (also known as the urban renewal area); and

Whereas, A proposed form of contract between The City of New York and Grace Housing Development Fund Company, Inc., for the sale of City owned land to the housing development fund company and the redevelopment of the project area by said company, has been submitted to the Board of Estimate, together with the certificate of approval of the Housing and Development Administrator; and

Whereas, Grace Housing Development Fund Company, Inc., has submitted to the Board of Estimate its application for the exemption from local and municipal taxes, other than assessments for local improvements, for the period from the closing of the mortgage and delivery of the deed until the date of issuance of the temporary or permanent Certificate of Occupancy, whichever may be earlier, or, in each case, on all of the value of the real property to be included in the completed project, which exceeds the property value required to yield taxes the equivalent of one less than 9 per cent of annual shelter rent or carrying charges, which in the case of a project mortgage insured under Section 221(d)(3) of the National Housing Act as amended means the total rents received from the occupants of a project less the cost of providing to the occupants electricity, gas, heating, and other utilities; and as a percent price of under Section 236 of the National Housing Act, as amended, means the basic rent for the project as defined in that Section, less the cost of providing to the occupants electricity, gas, heating and other utilities) of the project for the period commencing with the date of issuance of a temporary or permanent Certificate of Occupancy for the project, whichever may be earlier, or if the project is constructed in stages, then the date of issuance of a temporary or permanent Certificate of Occupancy, whichever may be earlier, for each stage of the project and ending on the date on which the benefits of the abatement tax exemption first became available and effective that is, from the date of the closing of the mortgage and the delivery of the deeds; and

Whereas, The Board of Estimate held a public hearing on the 25th day of August, 1970 (Cal. No. 11), pursuant to Article XI of the Private Housing Finance Law and Article XV of the General Municipal Law, as amended, to consider the said contract of sale and application for tax exemption; now, therefore, be it

Resolved, 1. That the proposed contract between the City of New York and Grace Housing Development Fund Company, Inc., relating to the sale and redevelopment of a portion of the Central Brooklyn Urban Renewal Area, as described in said contract, in connection with and pursuant to the provisions of Article XI of the Private Housing Finance Law and Article XV of the General Municipal Law, is hereby approved; and the Mayor or Deputy Mayor is hereby authorized and directed to execute the same, when approved as to form by the Corporation Counsel and the City Clerk is hereby directed to attest the same and affix the seal of the City thereto; and

2. That the disposition of the land required for the development of the housing development fund company project by negotiation is the appropriate method of making the land available for redevelopment; and

3. That Grace Housing Development Fund Company, Inc. possesses the qualifications and financial resources necessary to acquire and develop the land in accordance with the project plan and urban renewal plan; and

4. That the purchase price is adequate, and not less than the fair value of the land for use in accordance with the urban renewal plan; and

5. That the sale to and acquisition by Grace Housing Development Fund Company, Inc. of the real property described as the disposition and housing site in said redevelopment contract is hereby approved as necessary for the public purposes declared in Article XI of the Private Housing Finance Law; and

6. That the Board of Estimate hereby approves the exemption from local and municipal taxes, other than assessments for local improvements, for the period from the closing of the mortgage and delivery of deed until the date of issuance of the temporary or permanent Certificate of Occupancy for the project, whichever may be earlier, for each stage of the project, as hereinbefore set forth, on the project which exceed the property value required to yield taxes the equivalent of one less than 9 per cent of the annual shelter rent or carrying charges, which in the case of a project mortgage insured under Section 221(d)(3) of the National Housing Act as amended means the total rents received from the occupants of a project less the cost of providing to the occupants electricity, gas, heating and other utilities; and as a percent price of under Section 236 of the National Housing Act, as amended, means the basic rent for the project as defined in that Section, less the cost of providing to the occupants electricity, gas, heating and other utilities) of the project for the period commencing with the date of issuance of a temporary or permanent Certificate of Occupancy for the project, whichever may be earlier, or if the project is constructed in stages, then the date of issuance of a temporary or permanent Certificate of Occupancy, whichever may be earlier, for each stage of the project and ending on

BOARD OF ESTIMATE
CITY OF NEW YORK

(Cal. No. 11)—Page 2

ever may be earlier for each stage, the aforesaid tax exemption to operate and continue for so long as an FHA insured mortgage is outstanding, but in no event for a period of more than 40 years commencing from the date on which the Board of the aforesaid tax exemptions first became available and effective, that is, from the date of the closing of the mortgage and delivery of the deed; provided

(a) That Grace Housing Development Fund Company, Inc., obtains a Federally-aided mortgage as defined in subdivision 3 of Section 572 of the Private Housing Finance Law; and

(b) That Grace Housing Development Fund Company, Inc., will at the time the project is completed and available for occupancy submit a statement from the Federal Housing Administration certifying that the project was completed in accordance with the terms and conditions of said Federally-aided mortgage.

7. That the Commissioner of the Department of Real Estate be, and he hereby is authorized and directed to sell the aforementioned leases, as recorded in said redevelopment contract to Grace Housing Development Fund Company, Inc., at the price fixed in said contract upon the terms and conditions therein stated, without public auction or bidding pursuant to the provisions of Section 367 of Article XX of the General Municipal Law, as amended, and Section 576-A of the Private Housing Finance Law.

REL 454 PAGE 670

A true copy of resolution adopted by the Board of Estimate on AUGUST 20, 1970.

Ruth R. Bralley

Secretary.

250

REEL 454 PAGE 671

THE CITY OF NEW YORK

to

GRAND HOUSING DEVELOPMENT FUND CORP., Inc.

FOR SUBSIDY TO NEW YORK

DEED

24519

DEED

OFFICE OF CITY REGISTER
Kings County
RECORDED
Witness my hand
and official seal

CITY REGISTER

The land affected by the within instrument lies in Section 19 Block 3726 Lot 16 and in Section Block 3727 Lots 36 and 1 [illegible] Kings County Tax Map

RETURN

[illegible]

Robert [illegible]
Corporation Counsel
100 Church Street
New York, N.Y.

CITY OF NEW YORK

to

GRACE HOUSING DEVELOPMENT
FUND COMPANY, INC.

CERTIFIED COPY

CITY OF NEW YORK
FINANCE ADMINISTRATION
OFFICE OF THE CITY REGISTER
KINGS County,

Charges $ 8.00

Application No. 367927

Prepared by M.T.

For THOMAS N. ROTHSCHILD

Address 503 PENNSYLVANIA AVE.

B'KLYN. N.Y. 11207

251

265

252

X-6-22M-321033(73) 346

№ 9802

STATE OF NEW YORK,
COUNTY OF KINGS . }

I hereby certify that the annexed is a true copy of an instrument made by

CITY OF NEW YORK to

GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

recorded in the office of the New York City Register KINGS County on the 21ST day of DECEMBER 1970 at M, in Section Block 3736 Liber/Reel 454 of REELS Page 664

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 3RD day of OCTOBER 1974

Matthew P. Troy
City Register

FHA FORM NO 1733
Rev. Oct. 1969
(Prior revisions obsolete)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

REGULATORY AGREEMENT FOR NON PROFIT AND PUBLIC MORTGAGORS UNDER SECTION 221(d)(3) OF THE NATIONAL HOUSING ACT, AS AMENDED

BE 3736 LR 3732
1-2-3-4-5-6-7-8-9-10-11
12-13-14-23-24-25-27-38
TST 18

Project No 012-55201 - N.P.

Mortgagee INSTLCORP, INC.

Amount of Mortgage Note $4,662,400.00 Date December 14,1970

Mortgage: Recorded: State County Date

Book Page

This Agreement entered into this 14th day of December ,1970

between GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

whose address is 475 Vermont Street, Brooklyn, New York

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner)

REEL 454 PAGE 678

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 221(d)(3) of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 18 hereof, shall promptly make all payments due under the note and mortgage.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner, of an amount equal to $ 1538.75 per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or investment in obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Commissioner may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

(b) Where Owners are acquiring a project assisted, subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved or required in writing by the Commissioner.

(c) Owners shall establish and maintain, in addition to the reserve fund for replacements, a residual receipts fund by depositing thereto, with the mortgagee, the residual receipts, as defined herein, within 60 days after the end of the semiannual or annual fiscal period within which such receipts are realized. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purpose as he may determine.

3. Real property covered by themortgageand this Agreement is described in Schedule A attached hereto.

4. The Owners covenant and agree that:

(a) Admission to the project shall be limited to families having a low or moderate income which does not exceed the limits established by the Commissioner and in effect at the time of admission;

(b) Preference or priority for admission to the project and for placement on the waiting list, which Owners shall maintain, shall be extended to those families of low or moderate incomes who have certificates of eligibility as displaced families;

(c) On forms approved by the Commissioner they will obtain from each prospective tenant a certification of income prior to admission to the project, and a recertification of income from each tenant at least every two years following the date of admission;

(d) If any recertification discloses that family income exceeds the limits established by the Commissioner and in effect at the time of recertification, they shall either terminate the lease, or require the tenant to pay an increased rental in an amount computed in accordance with the formula prescribed by the Commissioner;

(e) They shall require all tenants to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year;

(f) The rent charged for each unit shall not exceed the upper limit of the range shown for such type of unit on the rental schedule approved in writing by the Commissioner, and shall include the reasonable use of all utilities shown on said schedule, but in no event shall the total gross monthly rents for all dwelling units exceed the gross monthly dwelling income for all units approved by the Commissioner on the rental schedule;

(g) No increase will be made in the amount of the gross monthly dwelling income for all units as shown on the rental schedule unless such increase is approved by the Commissioner, who will at any time entertain a written request for an increase properly supported by substantiating evidence and within a reasonable time shall:

(1) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which Owners have no effective control, or

(2) Deny the increase stating the reasons therefor;

(h) They will rent commercial facilities, if any, at not less than the rental approved by the Commissioner;

(i) If there are rent supplement units in the project, the determination as to the eligibility of tenants for admission to such units and the conditions of continued occupancy shall be in accordance with the Rent Supplement Contract executed by the Owners and the Commissioner which is incorporated in and made a part of this Agreement;

(j) In selecting tenants they shall not discriminate against any person or persons by reason of the fact that there are children in the family.

5. Upon prior written approval of the Commissioner, the Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owner or others to such tenant upon his request in addition to the facilities and services included in the approved Rental Schedule.

6. Owners agree that no dividends of any kind will be paid on the capital stock issued by the corporation, except as the charter may authorize due to domiciliary requirements.

7. Owners shall not without the prior written approval of the Commissioner:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, encumber any personal property of the project, including rents, or pay out any funds, except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive the rents and profits from the mortgaged property;

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(e) Engage in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;

REL 454 PAGE 679

EXHIBIT 2 256

(f) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any fund collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;

(g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;

(h) Incur any liability, direct or contigent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof;

(i) Pay any compensation, including wages or salaries, or incur any obligations, to themselves, or any officers, directors, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees;

(j) Enter into any contract or contracts for supervisory or managerial services.

8. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.

REEL 454 PAGE 680

9. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.

10.(a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners. Upon receipt of such request Owners shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.

(e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner, certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner

(f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project. Any owner receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust

11. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that title, and regulations issued pursuant to Executive Order 11063.

12. Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice thereof to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Commissioner, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Commissioner may:

(a) (1) If the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(2) If said note is not held by the Commissioner - notify the holder of the note of such default and request the holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations;

REEL 454 PAGE 681

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project,

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

13. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

14. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner,

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;

(d) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors or assigns; such term includes a nonprofit corporation executing this Agreement in its capacity as a contract purchaser of the project pursuant to a Sales Agreement with a Builder Seller mortgagor,

(e) "Mortgaged Property" includes all property, real, personal, or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Commissioner,

(f) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other such activities as are incidental thereto,

(g) "Residual Receipts" means any cash remaining after:

(i) the payment of:

(a) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Federal Housing Commissioner,

(aa) All amounts required to be deposited in the reserve fund for replacements;

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 14th day of December in the year 1970 before me personally came JACOB N. UNDERWOOD, to me known, who, being by me duly sworn, did depose and say that he resides in 432 New Jersey Avenue, Brooklyn, New York, that he is the president of GRACE HOUSING DEVELOPMENT FUND COMPANY, INC., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

REEL 454 PAGE 683

Barney Rosenstein

JACOB N. UNDERWOOD,
President

BARNEY ROSENSTEIN
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1972

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 14th day of December, 1970, before me personally came Lodrina F. Buonomo to me known and known to me, to be the duly authorized agent of the FEDERAL HOUSING COMMISSIONER, and the person described in and who executed the foregoing Regulatory Agreement by virtue of the authority vested in him as such authorized agent, and acknowledged to me that he executed the same in behalf of the FEDERAL HOUSING COMMISSIONER as such authorized agent.

Barney Rosenstein

Notary Public

BARNEY ROSENSTEIN
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1972

REEL 454 PAGE 684

SCHEDULE A

Description

ALL THAT CERTAIN lot, piece or parcel of land with the buildings and improvements thereon erected, situated, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

PARCEL I

Beginning at the intersection of the westerly side of Pennsylvania Avenue with the southerly side of Pitkin Avenue; thence southerly along the westerly side of Pennsylvania Avenue 400' to the northerly side of Belmont Avenue; thence westerly along the northerly side of Belmont Avenue 200' to the easterly side of Sheffield Avenue; thence northerly along the easterly side of Sheffield Avenue 400' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 200' to the point or place of beginning.

BL 3777
Lots
1-2-3-4-5-6-7-8-9-10-11-14-23-24-25-27-28

PARCEL II

BL 3730 Lot 18

Beginning at the intersection of the southerly side of Pitkin Avenue with the westerly side of Sheffield Avenue; thence southerly along the westerly side of Sheffield Avenue 100'; thence westerly parallel with Pitkin Avenue 100'; thence northerly parallel with Sheffield Avenue 100' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 100' to the point or place of beginning.

711426

47356

E/S

NOT SUBJECT TO MTGE TAX

2 Blocks

Block 3736 lot 18

Block 3737 lots 1-11 inclusive
Lots 38-23-24-25
25-27

King County

Re

From Royal ABSTRACT CORP.

280 Broadway New York, N.Y. 10007

TITLE REPORTS AND POLICIES
ALL COUNTIES

OFFICE OF CITY REGISTER
City of New York
Kings County
RECORDED
Witness my hand
and official seal

CITY REGISTER

1970 DEC 21 PM 3:04

RECORDED 685

2602

X-6-22M-321033(73) 346

№ 9803

STATE OF NEW YORK,
COUNTY OF KINGS .

I hereby certify that the annexed is a true copy of an instrument made by
HOUSING & URBAN DEVELOPMENT with
GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.
recorded in the office of the New York City Register KINGS County on the 21ST
day of DECEMBER 1970 at 9:54 AM, in Section Block 3736
Liber/Reel 454 of REELS Page 678

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal,
this 3RD day of OCTOBER 1974.

Matthew R Troy
City Register

HOUSING & URBAN DEVELOPMENT

to

GRACE HOUSING DEVELOPMENT
FUND COMPANY, INC.

CERTIFIED COPY

CITY OF NEW YORK
FINANCE ADMINISTRATION
OFFICE OF THE CITY REGISTER
KINGS County.

Charges $ 8.00

Application No. 367928

Prepared by M.T.

For THOMAS N. ROTHSCHILD

Address 503 PENNSYLVANIA AVE.

B'KLYN, N.Y. 11207

EXHIBIT 4

Index No. 11584 Year 19

FEB 21 1969 717901 – 8

FILED FEB 21 1969

1969 FEB 21 PM 2:57

KING'S COUNTY CLERK'S OFFICE

CERTIFICATE OF INCORPORATION

of

GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

Pursuant to Article XI of the Private Housing Finance Law and the Membership Corporations Law.

RECEIVED
NOV 7 1968
SECRETARY
N. Y. STATE DEPT. OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 1 81968
TAX $ None
FILING FEE $ 50

John P. Lomenzo
Secretary of State
By [illegible]

MELVIN KATZ
NEWMARK, LOEHM & ROSENSTEIN
Attorneys for Grace Housing Development Fund Co., Inc.
Office and Post Office Address
500 Fifth Avenue
Borough of Manhattan New York, N.Y. 10036
1522 Bushwick Avenue
To Brooklyn, New York

Attorney for

Service of a copy of the within is hereby admitted.

Dated,

Attorney for

...y ENTRY

...e that the within is a (certified)

...office of the clerk of the within
19

MELVIN KATZ
Yours, etc.,
LOEHM & ROSENSTEIN
1522 Bushwick Avenue
Brooklyn, New York
and Post Office Address
500 Fifth Avenue
...ttan New York, N.Y. 10036

...ICE OF SETTLEMENT

...otice that an order

...n is a true copy will be presented
...e Hon.

... of the within named Court, at

... of 19

...d.
MELVIN KATZ
Yours, etc.,
LOEHM & ROSENSTEIN
1522 Bushwick Avenue
Brooklyn, New York
and Post Office Address
500 Fifth Avenue
...ttan New York, N.Y. 10036

264

OF

GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

717901

Pursuant to Article XI of the Private Housing Finance Law and the Membership Corporations Law.

We, the undersigned, for the purpose of forming a company pursuant to Article XI of the Private Housing Finance Law and the Membership Corporations Law, both of the State of New York, hereby certify:

I

The name of the proposed company is GRACE Housing Development Fund Company, Inc. and is hereinafter referred to as the "Company".

II

This company has been organized exclusively to develop, on a non-profit basis, a housing project for persons of low income where no adequate housing exists for such persons, which project is to be aided by a below-market interest rate mortgage insured by the Secretary of Housing and Urban Development, or a mortgage insured by the Secretary of Housing and Urban Development and augmented by a program of rent supplements authorized by the housing and urban development act of nineteen hundred sixty-five, or a mortgage loan made by the Secretary of Housing and Urban Development pursuant to section two hundred two of the housing act of nineteen hundred fifty-nine, and any federal laws amendatory or supplemental thereto.

The company is empowered to do and perform all acts reasonably necessary to accomplish the purposes of the company, including the execution of a Regulatory Agreement with the Federal Housing Commissioner and of such other instruments and undertakings as may be necessary to enable the company to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the company, its successors and assigns, so long as a mortgage on the company's property is insured or held by the Federal Housing Commissioner.

This Certificate of Incorporation may not be altered or amended without the consent of both the Federal Housing Commissioner and the State Commissioner of Housing and Community Renewal.

D-HDF 2a (Fed. Membership Corp.) (6-68)

III

All income and earnings of the company shall be used exclusively for company purposes, and no part of the net income, net earnings or assets of the company shall inure to the benefit or profit of any private individual, firm, corporation or association.

In the event of the dissolution of the company or the winding up of its affairs, the company's property shall not be conveyed or distributed to any individual or organization created or operated for profit, but shall be conveyed or distributed only to an organization or organizations created and operated for non-profit purposes similar to those of the company; provided, however, that the company shall at all times have the power to convey any or all of its property to the Federal Housing Commissioner or his nominee.

IV

If the company receives a temporary loan or advance from the Housing Development Fund, as established by Article eleven of the Private Housing Finance Law, it shall be authorized to enter into an agreement with the Commissioner of Housing and Community Renewal of the State of New York, providing for regulation with respect to rents, profits, dividends and disposition of property or franchises.

V

If the company receives a temporary loan or advance from the Housing Development Fund as established by Article eleven of the Private Housing Finance Law, the Commissioner of Housing and Community Renewal of the State of New York shall have the power, if, in his discretion, he determines either that any such temporary loan or advance is in jeopardy of not being repaid, or that the proposed housing project for which such temporary loan or advance was made is in jeopardy of not being constructed, to appoint to the board of directors of such company a number of new directors, which number shall be sufficient to constitute a majority of such board, notwithstanding any other provision of this certificate of incorporation or of any other provision of law.

VI

Nothing contained in the Certificate of Incorporation shall authorize the company

a) to carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

EXHIBIT B 267

b) to undertake or carry on any of the activities specified in Section 11 of the Membership Corporation Law, or Section 35 of the Social Welfare Law of the State of New York.

VII

The office of the company is to be located in the City of New York County of Kings and State of New York.

VIII

The territory in which the company's operations are principally to be conducted shall be Brooklyn, New York.

IX

The duration of the company shall be perpetual.

X

By-laws of the company may be adopted by the directors at any regular meeting or at any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles, of the Regulatory Agreement between the company and the Federal Housing Commissioner, Article Eleven of the Private Housing Finance Law, or the by-laws of the members.

XI

The number of directors of the company shall be not less than three nor more than fifteen.

XII

The names and residences of the directors of the company until the first annual meeting are:

Names	Residences (If within a city, give house no., street, city or other particular description)
SIGN: Rev. Jacob N. Underwood TYPE:	REV. JACOB N. UNDERWOOD, 432 New Jersey Ave., Bklyn, N.Y. (Chairman)
SIGN: George B. Thomas TYPE:	GEORGE THOMAS, 1134 Union St., Brooklyn, N. Y.
SIGN: Harris M. Haynes TYPE:	HARRIS HAYNES, 147-10 Foch Blvd., Jamaica, N. Y.
SIGN: Hayward Bevans TYPE:	HAYWARD BEVANS, 1231 Union St., Brooklyn, N. Y.
SIGN: Major Cunningham TYPE:	MAJOR CUNNINGHAM, 432 New Jersey Ave., Brooklyn, NY
SIGN: Howard Kelly TYPE:	HOWARD KELLY, 483 Vermont St., Brooklyn, N. Y.
SIGN: George B. Thomas TYPE:	THOMAS PERKINS, 82 Williams Ave., Brooklyn, N.Y.
SIGN: Clifton Quick TYPE:	CLIFTON QUICK, 548 New Jersey Ave., Brooklyn, N. Y.
SIGN: Louis E. Glencamp TYPE:	LOUIS E. GLENCAMP, 1414 Lincoln Pl., Brooklyn, N.Y.
SIGN: William Wright TYPE:	WILLIAM WRIGHT, 292 Hinsdale St., Brooklyn, N. Y.

The names and residences of the subscribers to this Certificate of Incorporation are:

	Names	Residences (If within a city, give house no., street, city, or other particular description)
SIGN: Rev. Jacob N. Underwood (Chairman)	REV. JACOB N. UNDERWOOD	432 New Jersey Ave., Bklyn, NY
SIGN: George B. Thomas	GEORGE THOMAS	1184 Union St., Brooklyn, N. Y.
TYPE: Harris M. Haynes	HARRIS HAYNES	147-10 Foch Blvd., Jamaica, N. Y.
SIGN: Hayward Bevans	HAYWARD BEVANS	1231 Union St., Brooklyn, N. Y.
TYPE: Major Cunningham	MAJOR CUNNINGHAM	432 New Jersey Ave., Brooklyn, N. Y.
SIGN: Howard Kelly	HOWARD KELLY	483 Vermont St., Brooklyn, N. Y.
TYPE:	THOMAS PERKINS	82 Williams Ave., Brooklyn, N. Y.
SIGN: Clifton Quick	CLIFTON QUICK	548 New Jersey Ave., Brooklyn, N. Y.
TYPE: Louis E. Glencamp	LOUIS E. GLENCAMP	1414 Lincoln Pl., Brooklyn, N. Y.
SIGN:	WILLIAM WRIGHT	292 Hinsdale St., Brooklyn, N. Y.
TYPE:		

XIV

All of the subscribers to this Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States, and at least one of the persons named as a director of the Company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in triplicate, this 15th day of Sept 1968.

Rev. Jacob N. Underwood (Chairman)

SIGN: George B. Thomas
TYPE: George Thomas (Secretary)

Harris M. Haynes
Harris Haynes

SIGN: Hayward Bevans
TYPE: Hayward Bevans

Major Cunningham

SIGN: Howard Kelly
TYPE: Howard Kelly

Thomas Perkins

SIGN: Clifton Quick
TYPE: Clifton Quick

Louis E. Glencamp

SIGN: William Wright
TYPE: William Wright

STATE OF NEW YORK
COUNTY OF Kings

On this 15th day of Sept, 1968, before me, personally came Rev. Jacob N. Underwood, George Thomas, Harris Haynes, Hayward Bevans, Major Cunningham, Howard Kelly, Thomas Perkins, Clifton Quick, Louis E. Glencamp and William Wright

to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation of GRACE Housing Development Fund Company, Inc. and they duly severally acknowledged to me that they executed the same.

Barney Rosenstein

BARNEY ROSENSTEIN
Notary Public, State of New York
No. 30-8656875
Qualified in Nassau County
Commission Expires March 30, 1970

Notary Public

D-HDF 2a (Fed. Membership Corp.) -4- 282

APPROVAL OF SUBSCRIBERS AND CONSENT TO INCORPORATION BY
COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL

I, JAMES Wm. GAYNOR, Commissioner of Housing and Community Renewal of the State of New York, do this 14th day of October 1968, hereby approve the subscribers named in the foregoing Certificate of Incorporation of GRACE Housing Development Fund Company, Inc. for the purpose of and as provided by Article eleven of the Private Housing Finance Law of the State of New York, and pursuant to said Article eleven, hereby certify that I consent to the filing of said Certificate of Incorporation with the Secretary of State of the State of New York.

JAMES Wm. GAYNOR
COMMISSIONER OF HOUSING AND
COMMUNITY RENEWAL

The undersigned, a Justice of the Supreme Court of the State of New York, wherein is located the principal office of [illegible], hereby approves the within Certificate of Incorporation of GRACE Housing Development Fund Company, Inc. and the filing thereof.

DATED: Brooklyn, N.Y. Oct 14, 1968.

JUSTICE OF THE SUPREME COURT
Second Judicial District
[illegible] County

EXHIBIT 5

BROOKLYN LEGAL SERVICES CORPORATION A

OFFICES SERVING BROWNSVILLE, BUSHWICK AND EAST NEW YORK

BROWNSVILLE LEGAL SERVICES
424 STONE AVENUE
BROOKLYN, NEW YORK 11212
PHONE (212) 345-6200

EAST NEW YORK LEGAL SERVICES
803 PENNSYLVANIA AVENUE
BROOKLYN, NEW YORK 11207
PHONE (212) 385-4045

September 12, 1974

Mr. George Brown
Acting Director
Loan Management Division
U.S. Dept. of Housing and
Urban Development
666 Fifth Avenue
New York, New York 10019

Re: Proposed Grace Towers
Rent Increase

Dear Mr. Brown:

I appreciated the opportunity to meet with you on Tuesday, September 10, 1974, to discuss the proposed Grace Towers 23% rent increase.

I have advised our clients, the Grace Towers Tenants' Association, of the following understanding I believe we reached in the meeting.

1. It was agreed that your office would meet with representatives of the Association and their legal and accounting counsel to review all material submitted by the owner, Grace Housing Development Fund Co., Inc., in support of their application for a rent increase.

2. It was also agreed that your office would consider any material submitted by the tenants in opposition to the increase and that HUD would make a new determination with respect to the increase, if such material leads to a finding of unwarranted owner requests.

3. Finally, I understand that your office will give the tenants a letter stating HUD's eventual determination regarding the rent increases with your supporting reasons.

In the next few days, our office will present this agreement to the tenants for their consideration. Should they agree to the meeting, I will call your office to arrange a mutually convenient date.

Very truly yours,

EAST NEW YORK LEGAL SERVICES

Igou Allbray

IGOU ALLBRAY
Law Clerk

IA:IS

cc: Mr. Benning Mason
President, Grace Towers Tenant Assoc.
2060 Pitkin Avenue
Brooklyn, New York 11207

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
HEMPSTEAD INSURING OFFICE
175 FULTON AVENUE
HEMPSTEAD, NEW YORK 11550

REGION II
26 Federal Plaza
New York, New York 10007

September 19, 1974

IN REPLY REFER TO:
2.1HL (Brown)

Mr. Igou Allbray
B'klyn. Legal Services Corp. "A"
503 Pennsylvania Avenue
Brooklyn, New York, 11207

Dear Sir:

Subject: Ref's. to your letter 9/12/74 - Grace Towers.

Your letter does not quite set forth our position which perhaps you mis-understood.

We will make available to the Association and/or their representatives, all material submitted by the Mortgagor in substantiation of their request for increased rentals, also a photocopy of letter dated 8/1/74 approving the present rentals.

Again if you have any knowledge of the submission of untruth or inaccuracies in the submitted material, we would appreciate your advise and evidence thereof.

Sincerely,

Alfonse P. Lai

for Leon Weinberg
Acting Director
Housing Management Division

EXHIBIT 6

AGREEMENT FOR NON-PROFIT AND PUBLIC MORTGAGORS UNDER SECTION 221(d)(3) OF THE NATIONAL HOUSING ACT, AS AMENDED

Ml 3236 M 3732
Loan 18 1-2-3-4-5-
Sec 14-23-24-

Project No 012-55201 - N.P.

Mortgagee INSTLCORP, INC.

Amount of Mortgage Note $4,662,400.00 Date December 14..

Mortgage: Recorded: State County Date

Book Page

This Agreement entered into this 14th day of December , 1970

between GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

whose address is 475 Vermont Street, Brooklyn, New York

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner).

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 221(d)(3) of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 18 hereof, shall promptly make all payments due under the note and mortgage.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner of an amount equal to $ 1538.75 per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the event of a default in the terms of the mortgage pursuant to which the loan has been accelerated, the Commissioner may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

(b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved or required in writing by the Commissioner.

(c) Owners shall establish and maintain, in addition to the reserve fund for replacements, a residual receipts fund by depositing thereto, with the mortgagee, the residual receipts, as defined herein, within 60 days after the end of the semiannual or annual fiscal period within which such receipts are realized. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purpose as he may determine.

3. Real property covered by the mortgage and this Agreement is described in Schedule A attached hereto.

** See Rider B attached hereto

[illegible]

[illegible] to those families of low or moderate [illegible] the [illegible] tenants.

[illegible] the form approved by the Commissioner they will obtain from each prospective tenant [illegible] income prior to admission to the project, and a recertification of income from each tenant at [illegible] following the date of admission;

(d) If any recertification discloses that family income exceeds the limits established by the [illegible] in effect at the time of recertification, they shall either terminate the lease, or require the tenant to pay an increased rental in an amount computed in accordance with the formula prescribed by the [illegible]

(e) They shall require all tenants to execute a lease in the form prescribed by the Commissioner and [illegible] rent any unit in the project for less than 30 days nor more than one year;

(f) The rent charged for each unit shall not exceed the upper limit of the range shown for such [illegible] the rental schedule approved in writing by the Commissioner, and shall include the reasonable [illegible] shown on said schedule, but in no event shall the total gross monthly rents for all dwelling units exceed the gross monthly dwelling income for all units approved by the Commissioner on the rental schedule.

(g) No increase will be made in the amount of the gross monthly dwelling income for all units as shown on the rental schedule unless such increase is approved by the Commissioner, who will at any time entertain a written request for an increase properly supported by substantiating evidence and within a reasonable time [illegible]

(1) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which Owners have no effective control, or

(2) Deny the increase stating the reasons therefor;

(h) They will rent commercial facilities, if any, at not less than the rental approved by the [illegible]

(i) If there are rent supplement units in the project, the determination as to the eligibility of tenants for admission to such units and the conditions of continued occupancy shall be in accordance with the [illegible] Contract executed by the Owners and the Commissioner which is incorporated in and made a part of this Agreement;

(j) In selecting tenants they shall not discriminate against any person or persons by reason of the fact that there are children in the family.

5. Upon prior written approval of the Commissioner, the Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any [illegible] and/or services which may be furnished by the Owner or others to such tenant upon his request in addition to the facilities and services included in the approved Rental Schedule.

6. Owners agree that no dividends of any kind will be paid on the capital stock issued by the corporation, except as the charter may authorize due to domiciliary requirements.

7. Owners shall not without the prior written approval of the Commissioner:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, encumber any personal property of the project, including rents, or pay out any funds, except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive therents and profits from the mortgaged property;

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(e) Engage in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;

** See Rider B attached hereto

EXHIBIT 4

(g) Permit the use of the dwelling accommodations of the project for any purpose except as originally intended, or permit commercial use greater than that originally approved by the Commissioner.

(h) Incur any liability, direct or contigent, other than for current operating expenses arising out of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof.

(i) Pay any compensation, including wages or salaries, or incur any obligations, to themselves or any of their directors, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees.

(j) Enter into any contract or contracts for supervisory or managerial services.

8. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant to, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.

9. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.

10.(a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners. Upon receipt of such request Owners shall immediately terminate such contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.

(e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner, certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

(f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project. Any owner receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

11. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that title, and regulations issued pursuant to Executive Order 11063.

attached hereto

missioner, be designated by the Owners as their legal business address. If such notice is mailed to the Owners at such address, the Owners shall have thirty days after the date such notice is mailed to correct the violation, or such further time as the Commissioner reasonably determines is necessary to correct the violation, provided that if such notice the Commissioner may declare a default under this Agreement effective on the date of such notice of default and upon such default the Commissioner may:

(a) (1) If the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(2) If said note is not held by the Commissioner - notify the holder of the note of such default and request the holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereafter proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations;

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project;

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

13. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, or charges, but upon default this permission is terminated as to all rents due or collected thereafter.

14. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;

(d) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors or assigns; such term includes a nonprofit corporation executing this Agreement in its capacity as a contract purchaser of the project pursuant to a Sales Agreement with a Builder Seller mortgagor;

(e) "Mortgaged Property" includes all property, real, personal, or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Commissioner;

(f) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other such activities as are incidental thereto;

(g) "Residual Receipts" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Federal Housing Commissioner;

(ii) All amounts required to be deposited in the reserve fund for replacements;

** See Rider A attached hereto
** See Rider B attached hereto

(ii) An amount equal to the aggregate of all special funds required to be maintained by the

(ii) All tenant security deposits held;

(h) "Family" means (1) two or more persons related by blood, marriage, or operation of law who ... same unit; (2) a handicapped person who has a physical impairment which is expected to be of ... and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability could be improved by more suitable housing conditions; (3) a single person, 62 years of age or older; or (4) a single person less than 62 years of age provided that occupancy by such persons is limited to 10% of the dwelling units in the project, unless the occupants receive rent supplement benefits pursuant to a rent supplement contract in which instance the 10 percent limitation shall not be applicable.

(i) "Income" means the gross annual income of the family from all sources before taxes and withholding, after giving effect to exclusions allowed by the Commissioner;

(j) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice.

15. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Commissioner and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

(a) In the event this Agreement is executed by a nonprofit corporation in its capacity as a contract purchaser of the project pursuant to a Sales Agreement with a Builder-Seller mortgagor, it agrees that all of the provisions hereof shall continue to bind it in its capacity as title owner of the project upon consummation of the purchase. In the event the purchase is not consummated at final endorsement or such later time as may be agreed to in writing by the Commissioner, its obligations hereunder shall terminate.

16. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the right and obligations set forth and supersede any other requirements in conflict therewith.

17. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

18. The following Owners:

do not assume personal liability for payments due under the note and mortgage, to the reserve for replacements, or for matters not under their control, provided that such Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first hereinabove written.

GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.

Owners

By _____

Jacob N. Underwood - President

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
acting by and through the FEDERAL HOUSING COMMISSIONER

By _____

Authorized Agent

(All proper acknowledgements)

U.S. GOVERNMENT PRINTING OFFICE: 1968 O - 310-227 (138)

** See Rider B attached hereto

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COUNTY OF NEW YORK)

On the 14th day of December in the year 1970 before me personally came JACOB N. UNDERWOOD, to me known, who, being by me duly sworn, did depose and say that he resides in 432 New Jersey Avenue, Brooklyn, New York, that he is the president of GRACE HOUSING DEVELOPMENT FUND COMPANY, INC., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Liber 4514 page 683

BARNEY ROSENSTEIN
Notary Public, State of New York
No. 30-8455375
Qualified in Nassau County
Commission Expires March 30, 1972

Barney Rosenstein
JACOB N. UNDERWOOD,
~~President~~

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 14th day of December, 1970, before me personally came Lawrence F. Buonomo to me known and known to me, to be the duly authorized agent of the FEDERAL HOUSING COMMISSIONER, and the person described in and who executed the foregoing Regulatory Agreement by virtue of the authority vested in him as such authorized agent, and acknowledged to me that he executed the same in behalf of the FEDERAL HOUSING COMMISSIONER as such authorized agent.

Barney Rosenstein
Notary Public

BARNEY ROSENSTEIN
Notary Public, State of New York
No. 30-8455375
Qualified in Nassau County
Commission Expires March 30, 1972

** See Rider B attached hereto

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ALL THAT CERTAIN lot, piece or parcel of land with the buildings and improvements thereon erected, situated, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

PARCEL I

Beginning at the intersection of the westerly side of Pennsylvania Avenue with the southerly side of Pitkin Avenue; thence southerly along the westerly side of Pennsylvania Avenue 400' to the northerly side of Belmont Avenue; thence westerly along the northerly side of Belmont Avenue 200' to the easterly side of Sheffield Avenue; thence northerly along the easterly side of Sheffield Avenue 400' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 200' to the point or place of beginning.

PARCEL II

Beginning at the intersection of the southerly side of Pitkin Avenue with the westerly side of Sheffield Avenue; thence southerly along the westerly side of Sheffield Avenue 100'; thence westerly parallel with Pitkin Avenue 100'; thence northerly parallel with Sheffield Avenue 100' to the southerly side of Pitkin Avenue; thence easterly along the southerly side of Pitkin Avenue 100' to the point or place of beginning.

* See Rider A attached hereto
** See Rider B attached hereto

FORM NO. 2503

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

Contract No. 012-55201-[illegible]
(Project No.)

RENT SUPPLEMENT CONTRACT

THIS AGREEMENT *(herein called the "Contract")*, entered into this 14th day of [illegible], 19[illegible], between PRATT HOUSING DEVELOPMENT FUND COMPANY, INC. *(herein called the "Housing Owner")*, and its successors, and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner *(herein called the "Commissioner")*, and his successors, WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

SECTION 1. Purpose of Contract -- The purpose of this Contract is to provide financial assistance to enable certain private housing to be available for low income families and individuals who are elderly, handicapped, displaced, victims of natural disasters, or occupants of substandard housing, by the Commissioner's payment of a portion of the rent on behalf of qualified tenants, pursuant to Section 101 of the Housing and Urban Development Act of 1965, Public Law 89-117 89th Congress, H.R. 7984, August 10, 1965 *(herein called the "Rent Supplement Program")*.

SECTION 2. Description of Project -- The housing project covered by this Contract is identified as follows:

FHA Project No. 012-55201-[illegible]-SUP, located at Pratt, Penn'y Ave. & Pitkin Ave., Brooklyn, New York, consisting of 168 units *(herein called the "Project")*. The Project is subject to a mortgage in the amount of $ 1,532,400.00, insured under Section 221.[illegible] of the National Housing Act bearing interest at a permanent rate of 3 % *(herein called the "Insured Mortgage")*.

SECTION 3. Housing Owner's Certification of Authority - Commissioner's Certification of Eligibility of Housing Owner -- The Housing Owner certifies that it has the legal authority to enter into this Contract and to own, operate and manage the Project in accordance with this Contract and the regulations of the Secretary of Housing and Urban Development and the Commissioner governing the Rent Supplement Program.

The Commissioner certifies that the Housing Owner is eligible and has been approved for receiving the benefits of the Rent Supplement Program.

SECTION 4. Term -- This Contract shall continue until the termination or maturity of the Insured Mortgage, or 40 years from the date of the first payment made hereunder, whichever occurs first.

SECTION 5. Maximum Annual Contract Amount - The maximum dollar amount of rent supplement payments that may be made under this Contract in any one fiscal year shall be limited to an amount fixed by the Commissioner in the following manner:

Based upon probable effective demand and distribution of tenant income, the Commissioner has estimated that rent supplement payments in any one year plus a contingency allowance of 10% will not exceed 42,148.32.

The Housing Owner agrees, during a rent-up period as defined herein, to use its best efforts to secure rents whose annual rent supplement requirements would not exceed the Commissioner's estimate.

At the termination of the rent-up period, the Commissioner will adjust the original estimate to reflect the total rent supplement requirements of tenants during the rent-up period plus a contingency allowance of 10%. Upon such adjustment being made, the Commissioner shall give written notice thereof to the Housing Owner by an Addendum to be made a part of this contract.

The amount stated in the Addendum shall constitute the maximum annual contract amount and limit the amount of rent supplement payments that may be made under this Contract in any one fiscal year. It shall be effective, on a non-cumulative basis, from the time commencing after the rent-up period through the remaining term of the Contract.

The rent-up period shall commence on the date occupancy is first approved by the Commissioner and shall terminate 12 months thereafter, or upon such later date as the Commissioner has consented to in writing.

SECTION 6. Qualified Tenants -- The benefits of the rent supplement program shall be available only to an individual or family with respect to whom the Commissioner has issued a certificate of eligibility.

(8) (4)296

... Certificate of Eligibility - Amount of Rent Supplement Payments - Termination for Reported ... Increase for Hardship - Yearly Recertification Requirements and Adjustment. -- The Housing ... tenant in preparing an application for rent supplement payments. Upon request of the Hous... ...missioner will review the application for eligibility. If the application meets the require... ...missioner, the Commissioner shall issue the initial certificate of eligibility. The initial certifi... ...the amount of rent supplement payment that the Commissioner will make monthly to the Housing ... ...of the qualified tenant. This shall be the amount by which the fair market rental for the unit ap... ...Commissioner exceeds one-fourth of the tenant's income as determined by the Commissioner, or ... ...the allowance for housing if such allowance is larger than one-fourth of the tenant's income, ...the amount of rent supplement payment stated in the initial certificate of eligibility shall not, re... ...of the tenant's income, exceed 70% of the fair market rental for the unit. An initial certificate of eligi... ...be issued in any case where the amount of rent supplement payment would be less than 10% of the ... ...fair rental for the unit.

The Commissioner may terminate rent supplement payments upon a reported increase in income by the ... pursuant to Section 9 hereof.

Where a tenant's income has decreased due to illness, loss of job, or other hardship beyond his control, ...missioner may grant a temporary increase in rent supplement payments.

A recertification of income shall be obtained by the Housing Owner each year from the date the initial ... was issued, except with respect to tenants who are 62 years of age or older. The rent supplement ... shall be adjusted to reflect income changes shown by the recertification.

SECTION 8. Commissioner's Agreement to Make Rent Supplement Payments to Housing Owner -- During ... period the Commissioner agrees to make rent supplement payments to the Housing Owner on behalf ...ed tenants in the amounts set forth in the certificate of eligibility. Thereafter, the Commissioner ...rent supplement payments to the Housing Owner on behalf of qualified tenants in the amounts set ... the certificates of eligibility subject to the adjustment provided herein and the maximum annual contract ...ing the amount of payments in any one fiscal year. Payments shall be made monthly in accordance ...dates prescribed by the Commissioner. In no event shall payments be made for vacant units.

SECTION 9. Lease - Continuing Occupancy - Size of Units -- Occupancy by qualified tenants shall be ...ly upon the execution of a lease in form approved by the Commissioner. The lease must provide ... report immediately any increase in income which results in a monthly income of four or more ...l monthly rental for the housing unit occupied. The Housing Owner agrees to immediately notify ...sioner in writing of such report so that termination of rent supplement payments can be made. Fail... Housing Owner to notify the Commissioner of the report shall obligate the Housing Owner to reimburse ...sioner for any rent supplement payments made during the period the tenant is receiving the reported ...income. The lease shall also contain a provision obligating the tenant to reimburse the Commis... any rent supplement payments made by the Commissioner during a period when the tenant's income has ...four or more times the full monthly rental and the payments have not been terminated because of the ...fare to report such increase to the Housing Owner.

... by reason of an increase in income, a tenant is no longer entitled to rent supplement benefits, he ... to occupy the unit, but in no event shall the rent for the unit exceed the fair market rental as de... the Commissioner.

...ed tenants shall not be permitted to occupy units larger than the Commissioner determines neces...

SECTION 10. Tenant Selection -- The Housing Owner will be responsible for tenant selection and for the ...ental relationships, conditioned on the Commissioner's approval if the tenant is eligible for rent ... Housing Owner will be free to evict tenants for violation of lease provisions or for other ... Housing Owner may rent units to families or individuals who can afford to pay market rents or to ...individuals eligible to receive rent supplements.

...11. Records -- The Housing Owner shall maintain accurate records, books and accounts in ...ner as the Commissioner may prescribe. Such records, books and accounts shall be avail... ...missioner for inspection and audit.

...12. Default -- The violation of the regulations, or of any covenant of this Contract, or of the ... of the regulatory agreements, or the filing of any false statement or misrepresentation to ... on the part of the Housing Owner, shall constitute a default under this Contract. Upon such ...missioner may terminate this Contract without further liability hereunder and bring action to re... Housing Owner any excess rent supplement payments received in violation of this Contract.

(9) 297

SECTION 13. Non-Assignment -- This Contract or any interest therein may not be assigned without the written approval of the Commissioner.

SECTION 14. Exclusion - No member of or delegate to Congress, or resident commission, shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

SECTION 15. Provisions Applicable if Housing Owner is a Cooperative Corporation --

(a) As used in this Contract the term "tenant" shall mean a member of a cooperative, and the term "rent" shall mean the charges under the occupancy agreement between the members of the cooperative.

(b) A member of a cooperative that obtains a certificate of tenant eligibility shall be required, as a condition of receiving such certificate, to agree that upon a sale of such membership any equity increment accumulated through rent supplement payments will be turned over to the cooperative housing owner and will not be made available to the member. Funds received by a cooperative representing equity increment accumulated through rent supplement payments shall be deposited in a special account by the cooperative and disbursed as directed by the Commissioner.

SECTION 16. Renegotiation, Modification, Termination -- If, at any future time, the parties find that it would be to their best interests and to the best interests of the Rent Supplement Program, the maximum annual contract amount may be increased or decreased, or any other provision of the Contract may be modified or amended, or the entire contract be terminated, upon written agreement of the parties.

SECTION 17. Special Conditions -- The following special conditions shall be applicable to this Contract

:AL)

est: Witness:

Jamie C. Vale

GRACE HOUSING DEVELOPMENT FUND COMPANY, INC.
(Housing Owner)

By _____
President

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

by FEDERAL HOUSING COMMISSIONER

By _____

FHA-Wash., D. C.

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(10)

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SECTION 13. Non-Assignment -- This Contract or any interest therein may not be assigned [illegible] written approval of the Commissioner.

SECTION 14. Exclusion - No member of or delegate to Congress, or resident commission, shall be [illegible] to any share or part of this Contract or to any benefits which may arise therefrom; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

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SECTION 17. Special Conditions -- The following [illegible]

Ref: HF-99 3/20/67

Pending revision of the Rent Supplement Contract, FHA Form 2503, the following special conditions shall be included under section 17 of All Rent Supplement Contracts:

"The lease must provide that the tenant report immediately any increase in assets to more than $5,000 in the case of the elderly (62 years or older) and more than $2,000 in the case of other than the elderly. The Housing Owner agrees to immediately notify the Commissioner in writing of such report so that termination of rent supplement payments can be made. Failure of the Housing Owner to notify the Commissioner of the report shall obligate the Housing Owner to reimburse the Commissioner for any rent supplement payments made during the period the tenant's assets exceeded the aforesaid limits. The lease shall also contain a provision obligating the tenant to reimburse the Commissioner during the period when the tenant's assets exceeded the aforesaid limits and the payments have not been terminated because of the tenant's failure to report such increase to the Housing Owner."

Abbigail Gist

September 19, 1974

2.1HL (Brown)

Mr. Igou Allbray
B'klyn. Legal Services Corp. "A"
503 Pennsylvania Avenue
Brooklyn, New York, 11207

Dear Sir:

Subject: Ref's. to your letter 9/12/74 - Grace Towers.

Your letter does not quite set forth our position which perhaps you mis-understood.

We will make available to the Association and/or their representatives, all material submitted by the Mortgagor in substantiation of their request for increased rentals, also a photocopy of letter dated 8/1/74 approving the present rentals.

Again if you have any knowledge of the submission of untruth or inaccuracies in the submitted material, we would appreciate your advice and evidence thereof.

Sincerely,

Leon Weinberg
Acting Director
Housing Management Division

cc: Weinberg
Mtge File
Reading
Benning Mason, Pres. Grace Towers Tenant Assn.
2060 Pitkin Ave., Bklyn. N.Y. 11207

CORRESPONDENCE CODE	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
	2.1HL	2.1HL				
Name	Brown	Weinberg				
Date						

HUD-713 (2-73) Use previous edition — OFFICIAL RECORD COPY — U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Allbray
ltr. 2.13.

300

(12)

XXXXXXXXXX 666 Fifth Avenue
XXXXX 10019

August 1, 1974

2.1HL (Fric

Rev. Jacob M. Underwood
Grace Housing Development Fund Co., Inc.
225 New Jersey Avenue
Brooklyn, New York 11207

Dear Sir:

Subject: Project No. C12-55201-M, Grace Towers, Brooklyn, New York

The schedule of rents requested by you on our executed Form No. 2458 under date of July 26, 1974 is hereby approved.

This will establish a total maximum rental of $41,962.20 per month, based upon 167 units available for rental.

It is noted that there are 84 open parking spaces available to tenants without charge and that the commercial space is vacant and unrentable. It is further emphasized in the event that the commercial space is rented, apartment rentals must be reduced by a like amount.

This approval is conditioned upon the continuation of all tenant services originally contemplated, including the redecoration of each apartment unit at intervals no longer than three years and the furnishing of free gas and electricity to tenants.

Furthermore, this Administration must be advised of any downward adjustment in real estate taxes, within thirty days of such an occurrence.

Your attention is directed to the governing rules and regulations which require that upon approval of these rents, such accommodations shall be rented at or below the rents so approved and shall not, thereafter, be changed without prior approval of this Department.

You are admonished to use extreme caution in applying rent increases to tenants keeping in mind the serious impact of a large percentage increase. Every effort must be made to keep percentage increases to the absolute minimum consistent with prudent management.

Sincerely,

cc: PFAENDER WEINBERG RENTAL MANAGEMENT READING FRIEDMAN BRASLOW BUCH.

CORRESPONDENCE CODE	Jason Weinberg, Acting Director Housing Management Division	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENC
Name	2.1HL		2.1HL brown		
Date					

HUD-713 (2-73) Use previous edition OFFICIAL RECORD COPY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPME

301

0-Bedroom					
1-Bedroom	LR-DA-K	36	209.10		
	1 BR - 1B		7,527.60 ✓		
2-Bedroom	LR-DA-K	83	246.00		
	2BR-1B		20,418.00 ✓		
3-Bedroom	LR-DA-K				
	3BR - 1-1/2B	36	282.00		
			10,181.60 ✓		
4-Bedroom	LR-DA-K	12	319.35		
	4BR-2B		3,832.20 ✓		
TOTALS →		167	41,962.20 ✓		

*USE THE FOLLOWING SYMBOLS:

LU - LIVING UNIT — K - KITCHEN
LR - LIVING ROOM — KETTE - KITCHENETTE
DR - DINING ROOM — BR - BEDROOM
DA - DINING ALCOVE — B - BATH

EXAMPLE: LR - DA - K - 2 BR - 1 B

TOTALS FROM COL. 1	167	$ 41,962.
TOTALS FROM COL. 2		$
TOTAL UNITS AND GROSS MONTHLY DWELLING INCOME	167	41,962.
GROSS POTENTIAL ANNUAL DWELLING RENT INCOME		503,546.

EQUIPMENT AND SERVICES INCLUDED IN RENT: *(Check Appropriate Items)*

EQUIPMENT –
- [*] Ranges *(Gas or Elec.)*
- [*] Refrig. *(Gas or Elec.)*
- [ ] Air Cond. *(Equip. Only)*
- [*] Kitchen Exhaust Fan
- [ ] Laundry Facilities
- [ ] Disposal
- [ ] Dishwasher
- [ ] Carpet
- [ ] Drapes
- [ ] Other *(Specify)*

SERVICES – Decorating
GAS: [ ] Heat [*] Cooking [ ] Hot Water [ ] Air Conditioning
ELECT: [ ] Heat [ ] Cooking [*] Lights, etc. in Unit [ ] Hot Water [ ] Air Conditioning
OTHER FUEL: [*] Heat [*] Hot Water [ ] WATER [ ] OTHER

OTHER INCOME PRODUCING SPACE:

Type	No. in Project	Number of Units @ Unit Rent Per Month					
		Units	@	Units	@	Units	@
Garages Open Parking	84		$no charge		$		$
Stores							
Offices							
Commercial(vacant)	1		no income at present(see letter explanat				

NON-REVENUE PRODUCING DWELLING SPACES:

Composition of Unit *(Insert Description)*	No. of Each Type Unit	Per Annum Rental Value Assigned Unit Type	Use *(Janitor, Office, Resident Manager, etc.)*
LR-DA-K-2BR-1B	1	$ 2,952.00	Superintendent

I hereby certify that (1) the information contained on page 1 and 2 is complete, correct, is in accordance with the owner's records, and (2) no increases in approved dwelling rentals will be made without prior written consent of HUD.

Date 7/26/74 , 19____ Signature Lisi Goodlett Lockwood

Title Chairman

(If corporation, must be executed by President or Vice President)

GPO 909-362

...OF HOUSING AND URBAN DEVELOPMENT

RENTAL SCHEDULE AND INFORMATION ON RENTAL PROJECT

Project Owner (Mortgagor)

GRACE HOUSING DEVELOPMENT FUND CO., INC.

Name of Project

GRACE TOWERS

Address of Principal Office

223 New Jersey Avenue

Proje... 012

Name, Title and Address of Representative to Whom Correspondence should be addressed

Rev. Jacob N. Underwood Chairman

Fiscal Y... Dec.

TYPE OF MORTGAGOR ENTITY: 1. [*] Corporation 2. [ ] Partnership 3. [ ] Joint V...
4. [ ] Tenants in Common 5. [ ] Trust 6. [ ] Individual 7. [ ] Other (Specify)

LIST OF PRINCIPALS COMPRISING MORTGAGOR ENTITY. -- (Instructions for completion: In Listing principals, gi... Security number. 1. Corporation: List all officers and directors, and stockholders holding at least a 10% interest, stat... and type of stock held by each. If another legal entity is stockholder, list its name, type of entity, and principals as ... stock is known to be encumbered in any manner, state manner and reasons for encumbrances. List name and address of ... Agent, if any; 2. Partnership, 3. Joint Venture and 4. Tenants in Common: List all general partners, joint ventures or t... Designate and give the address of the general partner, joint venturer or tenant in common, whom HUD may hold respons... of the mortgagor's obligations and responsibilities. If any general partner, joint venturer or tenant in common is a corpor... give information required herein for such entity. 5. Trust: List all beneficiaries having at least a 10% interest, as well a... tors, or trustees. Give the address of such official whom HUD may hold responsible for fulfillment of the mortgagor's obli... sponsibilities. --- If space below is insufficient, continue listing on an attached sheet.)

Rev. Jacob N. Underwood	Chairman	
Thomas Perkins	Treasurer	247-38-5104
George Thomas	Secretary	235-16-1239
		256-05-0502

DEPT. HSG. & URB. DEV.
JUL 25 1974
NYAO
REC'D

15

(Complete all Schedules on Reverse Side)

303

HUD-92458

FAR RENT FILE

HOUSING AND DEVELOPMENT ADMINISTRATION
100 GOLD STREET, NEW YORK, N. Y. 10038

ROGER STARR, Administrator

June 26, 1974

Philip Click, Deputy Administrator
Real Property Assessment Dept.
Municipal Bldg. - Room 946
New York, N. Y.

Re: Shelter Rent Taxes - F.H.A.
Aided - Period 7/1/74-6/30/75

Dear Mr. Click:

We have in the past certified to Estimated or Actual Shelter Rent Taxes for the housing companies indicated in the attached Schedule.

We are now certifying to Estimated Shelter Rent Taxes for the period 7/1/74 - 6/30/75.

Please note that the amount of shelter rent taxes indicated on the schedule does not include assessments for local improvements or taxes on commercial areas.

In accordance with arrangements made on July 27, 1972 with Mr. James Harrington of your staff, your office will determine whether the exemption from real estate taxes for each company (Redevelopment only) is to be based on shelter rent formula or on the "increase over the assessed valuation of the real property, both land and improvements, acquired for the project at the time of its acquisition by the Limited Profit Housing Company" as provided by amended Section 33 of the Private Housing Finance Law.

Sincerely yours,

Joseph H. Perl
Director of Staff Projects
Comptroller's Office

JHP:NL:ja

cc: M. Kailo
J. Skelly
S. Seiler
R. Brouner
N. Lerner
Project Shelter Rent File
J. Monticciolo (Act. Director H.U.D.)

DEPT. HSG. & URB. DEV.
JUL 5 1974
NYAO
REC'D

(16)
304

March 1971
(Formerly FHA-2458)

OMB No. 63-R088

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RENTAL SCHEDULE AND INFORMATION ON RENTAL PROJECT

Name of Project Owner (Mortgagor)	Project No.
GRACE Housing Development Fund Co. Inc	012-55201-NPFA S

Name of Project	Address of Principal Office
GRACE Towers	223 New Jersey Ave. / Bklyn, NY.

Name, Title and Address of Representative to Whom Correspondence should be addressed	Fiscal Year of Project
Rev. JAcob N. Underwood, CHAIRMAN	Dec 31st ~~1974-1975~~

TYPE OF MORTGAGOR ENTITY: 1. ☒ Corporation 2. ☐ Partnership 3. ☐ Joint Venture
4. ☐ Tenants in Common 5. ☐ Trust 6. ☐ Individual 7. ☐ Other (Specify) _____

LIST OF PRINCIPALS COMPRISING MORTGAGOR ENTITY -- (Instructions for completion: In Listing principals, give name and Social Security number. 1. Corporation: List all officers and directors, and stockholders holding at least a 10% interest, stating number of shares and type of stock held by each. If another legal entity is stockholder, list its name, type of entity, and principals as required herein. If stock is known to be encumbered in any manner, state manner and reasons for encumbrances. List name and address of Corporate Resident Agent, if any; 2. Partnership, 3. Joint Venture and 4. Tenants in Common: List all general partners, joint ventures or tenants in common. Designate and give the address of the general partner, joint venturer or tenant in common, whom HUD may hold responsible for fulfillment of the mortgagor's obligations and responsibilities. If any general partner, joint venturer or tenant in common is a corporation or trust, give information required herein for such entity; 5. Trust: List all beneficiaries having at least a 10% interest, as well as managers, directors, or trustees. Give the address of such official whom HUD may hold responsible for fulfillment of the mortgagor's obligations and responsibilities. --- If space below is insufficient, continue listing on an attached sheet.)

Rev. JAcob N. Underwood	CHAIRMAN
Thomas Perkins	TREASURER
George Thomas	Secretary

1/24/91

Pkg. was picked up new 2458's to correct as noted. Still is forthcoming concerning Commercial vacant space which when rented will be part of ceiling.

R Wallin

Certified 1/29/91

(Complete all Schedules on Reverse Side)

HUD-92458

17

NTAL SCHEDULE FOR INCOME PRODUCING SPACE-DWELLINGS NOT INCLUDING FURNITURE RENTS:

Type of Unit	Unit Composition (Insert Description)*	Column 1 No. of Units	Column 1 Rental Rate	Column 1 Total Monthly Income	Column 2 No. of Units	Column 2 Rental Rate	Column 2 Total Monthly Income	Column 3 No. of Units	Column 3 Rental Rate	Column 3 Total Monthly Income
Efficiency			$	$		$	$		$	$
1 Bedroom										
	LR-DA-K									
	1BR-1B	36	209.00							
				7527.60						
2 Bedroom	LR-DA-K									
	2BR-1B	83	246.-							
				20,418.-						
3 Bedroom	LR-DA-K									
	3BR-1½B	36	282.90							
				10,184.40						
4 Bedroom	LR-DA-K									
	4BR-2B	12	295.00	3540.00						
	TOTALS →			41,962.20			$			$ 41,962.20

E THE FOLLOWING SYMBOLS:

U - LIVING UNIT K - KITCHEN
R - LIVING ROOM KETTE - KITCHENETTE
R - DINING ROOM BR - BEDROOM
A - DI[illegible] ALCOVE B - BATH

MPLE: LR - DA - K - 2 BR - 1 B

41,962.20	TOTALS FROM COL. 1
	TOTALS FROM COL. 2
	TOTAL UNITS AND GROSS MONTHLY DWELLING INCOME
	GROSS POTENTIAL ANNUAL DWELLING RENT INCOME

167	$41,962.20
167	$41,962.60
	$503,544.00
	503,546.40

PMENT AND SERVICES INCLUDED IN RENT: (Check Appropriate Items)

PMENT –
- Ranges (Gas or Elec.)
- Refrig. (Gas or Elec.)
- Air Cond. (Equip. Only)
- Kitchen Exhaust Fan
- Laundry Facilities
- ☐ Disposal
- ☐ Dishwasher
- ☐ Carpet
- ☐ Drapes
- ☐ Other (Specify)

SERVICES – Electricity
- GAS: ☐ Heat ☐ Hot Water ☒ Cooking ☐ Air Conditioning
- ELECT: ☐ Heat ☐ Hot Water ☐ Cooking ☐ Air Conditioning ☒ Lights, etc. in Unit
- OTHER FUEL: ☒ Heat ☒ Hot Water ☐ WATER ☐ OTHER

R INCOME PRODUCING SPACE:

Type	No. in Project	Number of Units @ Unit Rent Per Month					
		Units	@ $	Units	$	Units	@ $
ge	Open parking	84	No charge				
s							
mmercial (Vacant)		1	-0- (3,500.-)				

Mgr income deducted

REVENUE PRODUCING DWELLING SPACES:

Resident Superintendent

Composition of Unit (Insert Description)	No. of Each Type Unit	Per Annum Rental Value Assigned Unit Type	Use (Janitor, Office, Resident Manager, etc.)
DA-K-2BR-1B	1	$ 2952.00	Superintendent

hereby certify that (1) the information contained on page 1 and 2 is complete, correct, is in accordance with the owner's records, no increases in approved dwelling rentals will be made without prior written consent of HUD.

7/2, 19 74

Signature [signature]

Title Chairman

(If corporation, must be executed by President or Vice President)

304

498-7175

346-6600

GRACE HOUSING DEVELOPMENT FUND CO., INC.

223 NEW JERSEY AVENUE
BROOKLYN, N. Y. 11207

May 10, 1974

Mrs. I. Margaret White
Department of Housing And Urban Development
666 5th Avenue
New York, New York 10019

Subm #2738

Re: Grace Towers
012-55201
Rent Increase

Dear Madam:

Attached please find letter obtained from Department of Water Resources. Due to the fact we have not received a water bill the department prepared the attached information.

Yours truly,

Rev. J.N. Underwood

Rev. J.N. Underwood
Chairman

Phone No. 498-7175

(17) -307

(19)

The City of New York

ENVIRONMENTAL PROTECTION ADMINISTRATION
DEPARTMENT OF WATER RESOURCES
Bureau of Water Register
MUNICIPAL BUILDING, BROOKLYN, N. Y. 11201
Telephone: 643- 7861

IN REPLY, REFER TO
BLOCK 3737 LOT 1
2060 PITKIN AVE. AND
272 PENNSYLVANIA AVE.
BROOKLYN, N.Y.

MAY 5, 1974

TO WHOM IT MAY CONCERN,

THIS IS TO ADVISE YOU THAT AT THIS TIME, THE DEPARTMENT OF WATER RESOURCES IS IN THE PROCESS OF COMPUTERIZING THE FRONTAGE AND METERED WATER ACCOUNTS.

AS A RESULT, ACCOUNTS CANNOT BE PROCESSED AT THIS TIME

A HAND-CALCULATION OF THE SUBJECT ACCOUNTS PROVIDES THE APPROXIMATE FIGURES SHOWN BELOW FOR WATER CHARGES AND SEWER RENT

BLOCK 3737 - LOT 1 - 2060 PITKIN AVENUE
ANNUAL RATE - #3349.50

BLOCK 3737 - LOT 1 - 272 PENNSYLVANIA AVENUE
ANNUAL RATE - 3307.50

TOTAL - 6657.00 - WATER CHARGES
TOTAL - 1664.25 - SEWER RENT

GRAND ANNUAL TOTAL #8321.25

THE FIRST BILL, FOR THE PERIOD FROM JULY 20, 1972 THROUGH JUNE 30, 1974 SHOULD BE APPROXIMATELY

WATER - 12,757.25
SEWER RENT - 3,189.81
TOTAL #15,947.06

DEPT. HSG. & URB. DEV.
MAY 17 1974
NYAO
REC'D

VERY TRULY YOURS,

IRVING SPIELMAN
CHIEF CLERK

(20)
308

DATE March 25, 1974

TO Ms. L. Margaret White, Director
Property Management Division

Miss Barbara

find information requested for considerating
for Grace Tower, Brooklyn, N.Y.

er information is needed, don't hesitate to
ks for your consideration.

Eng. & Urb. Dev.

APR 2 1974

FROM Rev. J.N. Underwood, Chairman
Grace Housing Dev. Fund Co
Project:# 012-55201 NPPA

PRINTED WITH BRO NYLAO YORK, N. Y. 10038

RECD

12
309

GRACE HOUSING DEVELOPMENT FUND CO., INC.

223 NEW JERSEY AVENUE

BROOKLYN, N. Y. 11207

Discontinued 4/3/74

342-6061

March 15, 1974

Department of Housing & Urban Development
120 Church Street
New York, New York 10007

Re: Grace Housing Development
Fund Co., Inc.
Project # 012-55201NPPA

Rent Increase Request

Dear Madam/Sir;

The physical condition of properties located at 2060 Pitkin & 272 Pennsylvania Avenues are maintained in clean and safe conditions.

Redecorating will be in accordance with New York City Health Regulations. All turn-over apartments will be decorated immediately which average 8% during 1973.

2

Each apartment is equipped with, stove and refrigerator.

Services include; gas, electric, heat and hot water.

Income:

Rent	34,120.00
Commercial (vacant)	
Total	34,120.00

DEPT. HSG. & URB. DEV.

APR 2 1974

NYAO REC'D

Chairman, Grace Housing Dev.

water bill missing

audit FYE 12-31-73 rec'd 4-2-74

rec'd 4-2-74

BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

3

THIRD QUARTER

TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH
PAYMENT DUE
JANUARY 1, 1974

CHECK BLOCK AND LOT NUMBERS				
C	BLOCK	LOT	C	NC
10	3737	1	2	S

TAXABLE VALUATION
433,374

FULL TAX RATE PER $100 OF ASSESSED VALUATION 6.894

TOTAL TAX 1973 74
29,876.80

010174

7A 20

TOTAL

SHOWN ON THE REVERSE SIDE THIS BILL IS TO BE SUBMITTED WHEN PAYING THE THIRD QUARTERLY CHARGE.
YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3070
CHURCH ST STATION
NEW YORK N.Y. 10008

CASH PAYMENTS MAY BE MADE TO
CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST.
BKLYN N.Y. 11207

D.C. AUG 6 1973

AC 7175

346-6600

GRACE HOUSING DEVELOPMENT FUND CO., INC.

223 NEW JERSEY AVENUE

BROOKLYN, N. Y. 11207

272 Pennsylvania Avenue
&
2060 Pitkin Avenue

b/verifications

PAYROLL

	Employee	Classification	Gross Wkly. Income	Other
1.	Major Cunningham	Superintendent	165.00	4rm. Apt. (200.00) Mo.
2.	Clifton Quick	Maintenance	165.00	
3.	Gordon Chase	Maintenance Helper (part time)	68.75	
4.	Jimmy Bivins	Porter	137.50	
5.	Linwood Dancy	"	137.50	
6.	Robert Carroll	"	137.50	
7.	Jerry Cunningham	"	137.50	

Additional:

ALL EMPLOYEES ARE COVERED WITH HEALTH INSURANCE BY COMPANY AT THE RATE OF 33.38 MONTHLY, PER EMPLOYEE.

40.56
x 8
320.48

Rec'd 4-2-74

ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

3

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	RC
10	3737	1	2	S

TAXABLE VALUATION
433,374

010174

THIRD QUARTER
TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH
PAYMENT DUE
JANUARY 1, 1974

23

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE FIRST QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3370
CHURCH ST STATION
NEW YORK N.Y. 10008

CASH PAYMENTS MAY BE MADE TO
CASHIER 9 AM 3 PM MON. THRU FRI.
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

IF NAME AND/OR ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT THE ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST.
BROOKLYN N.Y. 11207

(12)

K

THE CITY OF NEW YORK
DEPARTMENT OF TAX COLLECTION
STATEMENT OF DELINQUENT REAL ESTATE TAXES, ASSESSMENTS AND WATER CHARGES

RECEIPT FOR PAYMENT

TION
TIONS

AN ONLY TO
IPAL BLDG
N Y 10007
TO 3 PM
HIS BILL IN THE

MUST INCLUDE
AKE CHECKS
E ORDER OF:
LLECTOR"

INTEREST FROM DATE DUE TO DATE OF PAYMENT MUST BE ADDED.
SEE REVERSE SIDE FOR INTEREST RATES.

B	BLOCK	LOT	CD	DATE OF STATEMENT
3	3737	1	2	05/31/7

GRACE HSNG. DEVEL FND INC
475 VERMONT ST
BROOKLYN NY 11207

E THIS ADVICE:
the Finance Administration indicate that as of the date of this statement certain charges remain unpaid for the parcel of proper
IF YOU HAVE MADE PAYMENT SINCE THE DATE OF THIS STATEMENT, PLEASE DISREGARD THIS NOTICE.
d charges are listed below. THERE MAY BE OTHER UNPAID CHARGES WHICH ARE NOT INCLUDED IN THIS STATEMENT.
ne City Collector's Office to ascertain such other unpaid charges.
rther accumulation of interest and possible receivership or foreclosure through "in rem" proceedings you are urged to settle this matt

TYPE OF TAX OR CHARGE	AUTHORITY ASSESSMENT OR METER NO	CODE	YEAR OF LEVY OR DATE OF ENTRY	RE FIRST HALF RE 1ST OR 3RD QTR FRONTAGE METER ASSESSMENTS	CODE	RE SECOND HALF RE 2ND OR 4TH QTR SEWER RENT	CODE
				.05	9	6649.03	2 5
REAL ESTATE	3&4 QTR		72/73	1779.29	9	1779.28	9
REAL ESTATE	1&2 QTR		71/72	1779.28	9	1779.28	9
REAL ESTATE	3&4 QTR		71/72				

YEAR	INTEREST DATE	CASH BOOK	FOLIO	DATE PAID	AMOUNT

RE 1ST HALF RE 1ST OR 3RD QTR FRONTAGE METER ASSESSMENTS	RE SECOND HALF RE 2ND OR 4TH QTR ASSESSMENTS	SEWER RENT ASSESSMENTS TAX YEARS 71 74

312 (24)

THE CITY OF NEW YORK
DEPARTMENT OF TAX COLLECTION
STATEMENT OF DELINQUENT REAL ESTATE TAXES, ASSESSMENTS AND WATER CHARGES

B	BLOCK	LOT	CO	DATE OF STATEMENT
3	3737	1	2	05/31/73

GPACE HSNG DEVEL FND INC
475 VERMONT ST
BROOKLYN NY 11207

NOTE THIS ADVICE: ...rds of the Finance Administration indicate that as of the date of this statement certain charges remain unpaid for the parcel of prope... ...ture. IF YOU HAVE MADE PAYMENT SINCE THE DATE OF THIS STATEMENT, PLEASE DISREGARD THIS NOTICE ... unpaid charges are listed below. THERE MAY BE OTHER UNPAID CHARGES WHICH ARE NOT INCLUDED IN THIS STATEMENT. ...ture at the City Collector's Office to ascertain such other unpaid charges. ...o avoid further accumulation of interest and possible receivership or foreclosure through "in rem" proceedings you are urged to settle this matt... promptly.

...MUST INCLUDE ...MAKE CHECKS ...THE ...ER OF: COLLECTOR"

TAX CODE	TYPE OF TAX OR CHARGE	AUTHORITY ASSESSMENT OR METER NO	CODE	YEAR OF LEVY OR DATE OF ENTRY	RE FIRST HALF RE 1ST OR 3RD QTR FRONTAGE METER ASSESSMENTS	CODE	RE SECOND HALF RE 2ND OR 4TH QTR SEWER RENT	CODE
10	REAL ESTATE	3&4 QTR		68/69	1211.64	8	1211.64	8
10	REAL ESTATE	1&2 QTR		69/70	2924.89	2	2924.89	2
10	REAL ESTATE	3&4 QTR		69/70	3057.70	0	3057.70	0
10	REAL ESTATE	1&2 QTR		70/71	4545.23	2	3646.55	1
10	REAL ESTATE	1&2 QTR		71/72	10.86	8	10.86	8
10	REAL ESTATE	3&4 QTR		71/72	10.86	8	10.86	8
10	REAL ESTATE	1&2 QTR		72/73	.05	9	.05	9

INTEREST DATE | IN SHIBOOK | FOLIO | DATE POSTED

ADDRESS MUNICIPAL BLDG
BROOKLYN N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	BC
10	3737	1	2	S

TAXABLE VALUATION
433,374

FULL TAX RATE PER $100 OF ASSESSED VALUATION: .004

TOTAL TAX 1973-74
62.64 A

1

070173

15.66
QUARTERLY PAYMENT DUE

INTEREST

TOTAL

FIRST QUARTER

TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
AUGUST 1, 1973

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE FOURTH QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3970
CHURCH ST STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO
CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST
BKLMN N.Y. 11207

B.C. AUG 16 1973 T

CORRECTED BILL 8/9/73 BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	BC
10	3737	1	2	S

TAXABLE VALUATION
433,374

FULL TAX RATE PER $100 OF ASSESSED VALUATION: .004

TOTAL TAX 1973-74
62.64 A

3

010174

15.66
QUARTERLY PAYMENT DUE

INTEREST OR DISCOUNT

TOTAL

THIRD QUARTER

TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
JANUARY 1, 1974

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE FOURTH QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3970
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO
CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST
BKLYN N.Y. 11207

B.C. AUG 16 1973

SEE REVERSE SIDE FOR DISCOUNT BENEFITS

8/9/72 CORRECTED BILL BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 (0) 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	BC
10	3737	1	2	S

TAXABLE VALUATION
433,374

FULL TAX RATE PER $100 OF ASSESSED VALUATION: 6.894

TOTAL TAX 1973-74
29,876.80 A

1

070173

7469.20
QUARTERLY PAYMENT DUE

INTEREST

TOTAL

FIRST QUARTER
TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
AUGUST 1, 1973

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE FIRST QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 2070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND. INC
475 VERMONT ST
BKLYN N.Y. 11207

B.C. AUG 16 1973 T

CORRECTED BILL 8/9/73 BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 (0) 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	BC
10	3737	1	2	S

TAXABLE VALUATION
433,374

FULL TAX RATE PER $100 OF ASSESSED VALUATION: 6.894

TOTAL TAX 1973-74
29,876.80 A

3

010174

7469.20

INTEREST

TOTAL

THIRD QUARTER
TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
JANUARY 1, 1974

26

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE THIRD QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 2070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST.
BKLYN N.Y. 11207

B.C. AUG 16 1973

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS				
	BLOCK	LOT	C	BC
10	3736	18	0	0

TAXABLE VALUATION
95,131

FULL TAX RATE PER $100 OF ASSESSED VALUATION 6.894

TOTAL TAX 1973-74
6558.32 A

1

0173

1639.58
QUARTERLY PAYMENT DUE

INTEREST

TOTAL

FIRST QUARTER
TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH
PAYMENT DUE
AUGUST 1, 1973

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE [illegible] QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST
BKLYN N.Y. 11207

B.C. AUG 16 1973 T

CORRECTED BILL 8/9/73 BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS
BLOCK 3736 LOT 18 C 3 BC 0

TAXABLE VALUATION
95,131

FULL TAX RATE PER $100 OF ASSESSED VALUATION 6.894

TOTAL TAX 1973-74
6558.32 A

3

010174

1639.58
QUARTERLY PAYMENT DUE

INTEREST OR DISCOUNT

TOTAL

THIRD QUARTER
TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH
PAYMENT DUE
JANUARY 1, 1974

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE [illegible] QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTOR
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS

GRACE HSNG DEV FND INC
475 VERMONT ST
BKLYN N.Y. 11207

B.C. AUG

8/9/73 Brwc

SEE REVERSE SIDE FOR DISCOUNT BENEFITS

CORRECTED BILL 8/9/73 BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	OC
10	3736	18	8	0

TAXABLE VALUATION
95,131

FULL TAX RATE PER $100 OF ASSESSED VALUATION .004

TOTAL TAX 1973-74
13.40 A

1

070173

3.35

QUARTERLY PAYMENT DUE

INTERNATIONAL

TOTAL

FIRST QUARTER

TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
AUGUST 1, 1973

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE ~~STATED~~ QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTION
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS.

GRACE HSNG DEV FND INC

475 VERMONT ST

BKLYN N.Y. 11207

BC

CORRECTED BILL 8/9/73 BWC

THE LAST DAY TO PROTEST ASSESSED VALUATIONS FOR 1974-75 IS MARCH 15, 1974

FINANCE ADMINISTRATION
BUREAU OF CITY COLLECTIONS
ROOM 1, MUNICIPAL BLDG.
BROOKLYN, N.Y. 11201

CITY OF NEW YORK
BROOKLYN

73 74

CHECK BLOCK AND LOT NUMBERS

C	BLOCK	LOT	C	OC
10	3736	18	8	0

TAXABLE VALUATION
95,131

FULL TAX RATE PER $100 OF ASSESSED VALUATION .004

3

010174

27

315

THIRD QUARTER

TAX YEAR
JULY 1, 1973
TO
JUNE 30, 1974

BILL WITH PAYMENT DUE
JANUARY 1, 1974

BILL FOR REAL ESTATE TAXES

YOUR TAX IS DUE IN FOUR INSTALLMENTS ON THE DATES SHOWN ON THE REVERSE SIDE. THIS BILL IS TO BE SUBMITTED WHEN PAYING THE ~~STATED~~ QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.

MAIL PAYMENTS TO:
CITY COLLECTOR
P.O. BOX 3070
CHURCH ST. STATION
NEW YORK, N.Y. 10008

CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM - MON - FRI AT
ROOM 1
MUNICIPAL BUILDING
BROOKLYN N.Y. 11201

MAKE CHECK OR MONEY ORDER PAYABLE TO CITY COLLECTION
IF NAME OR MAILING ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS.

GRACE HSNG DEV FND INC

475 VERMONT ST

4th day of ..., 19 74

Signature Sol Epstein

Title Chairman

(If corporation, must be executed by President or Vice President)

(18) 306

(19)

P175

346-6600

GRACE HOUSING DEVELOPMENT FUND CO., INC.

223 NEW JERSEY AVENUE

BROOKLYN, N. Y. 11207

Electric Bills
272 Pennsylvania Avenue
2060 Pitkin Avenue
Brooklyn, New York

272 Pennsylvania Avenue			2060 Pitkin Avenue		
12/27/73	- 1/28/74	2000.65	1/25/74	- 2/27/74	1820.48
11/28/73	- 12/27/73	1433.94	12/26/73	- 1/25/74	2326.99
10/26/73	- 11/28/73	1604.44	10/26/73	- 12/26/73	3257.13
9/26/73	- 10/26/73	1486.29	9/25/73	- 10/26/73	950.86
8/27/73	- 9/26/73	1532.38	8/24/73	- 9/25/73	1275.83
7/27/73	- 8/27/73	1427.62	*** NO BILLS		
5/29/73	- 6/27/73	1341.59	4/26/73	- 5/25/73	1209.89
5/3/73	- 5/29/73	1361.04	3/28/73	- 4/26/73	1732.57
4/2/73	- 5/3/73	1448.54	1/25/73	- 3/28/73	3339.31
3/12/73	- 4/2/73	1101.35	11/10/72	- 1/25/73	3583.02
2/1/73	- 3/12/73	2124.06			
12/27/72	- 2/1/73	2397.63			

*** Electric bills in dispute

14734

16,861.90

19491
16862
36358

Elec: 33,104 4,503
gas: 40,861

Rec'd 4-2-74

CITY OF NEW YORK
BROOKLYN
73 74
CHECK BLOCK AND LOT NUMBERS
C | BLOCK | LOT | C | NC
10 | 3737 | 1 | 2 | S
TAXABLE VALUATION
433,374
TAX RATE PER $100 OF ASSESSED VALUATION 6.924
TOTAL TAX 1973-74
3
C10174
TAX YEAR JULY 1, 1973 TO JUNE 30, 1974
BILL WITH PAYMENT DUE JANUARY 1, 1974
28
MAIL PAYMENTS TO: CITY COLLECTOR P.O. BOX 3929 CHURCH ST STATION NEW YORK, N.Y. 10008
CASHIER 9 AM - 3 PM ROOM 1 MUNICIPAL BUILDING BROOKLYN N.Y. 11201
IF NAME OR ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS
GRACE HSNG DEV FND INC
475 VERMONT ST.
BKLYN N.Y. 11207
AUG 6 1974

GRACE HOUSING DEVELOPMENT FUND CO., INC.

223 NEW JERSEY AVENUE

BROOKLYN, N. Y. 11207

272 Pennsylvania Avenue
2060 Pitkin Avenue
Brooklyn, New York

Gas Bills
both buildings

11/28/73	- 1/30/74	857.56
9/28/73	- 11/28/73	567.37
7/31/73	- 9/28/73	510.99
5/31/73	- 7/31/73	501.10
3/30/73	- 5/31/73	694.24
1/30/73	- 3/30/73	1372.19
11/29/72	- 1/30/73	1898.45

12 Mos

4503

Rec'd 4-2-74

10-31-73 rec'd 4-2-74

CITY OF NEW YORK
BROOKLYN
73 74
CHECK BLOCK AND LOT NUMBERS
C | BLOCK | LOT | C | NC
10 | 3737 | 1 | 2 | S
TAXABLE VALUATION
433,374
3
C10174
TAX YEAR JULY 1, 1973 TO JUNE 30, 1974
BILL WITH PAYMENT DUE JANUARY 1, 1974
29
TED WHEN PAYING THE ... QUARTERLY CHARGE. YOUR CANCELLED CHECK IS YOUR RECEIPT. RECEIPTED BILLS WILL NOT BE RETURNED UNLESS WRITTEN REQUEST ACCOMPANIES YOUR PAYMENT.
MAIL PAYMENTS TO: CITY COLLECTOR P.O. BOX 3929 CHURCH ST STATION NEW YORK, N.Y. 10008
CASH PAYMENTS MAY BE MADE TO CASHIER 9 AM - 3 PM MON - FRI AT ROOM 1 MUNICIPAL BUILDING BROOKLYN N.Y. 11201
IF NAME OR ADDRESS IS INCORRECT NOTIFY THE BUREAU OF CITY COLLECTIONS AT ABOVE ADDRESS
GRACE HSNG DEV FND INC
475 VERMONT ST.

PAGE 1

PHONE 636-1050
636-1051

Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION

6/3/72
Mr. Thanks for the prompt service

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

RE: Grace Towers

$ AMOUNT ENCLOSED

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					587.99 •
AUG 31 '71 FT	13,675	3,070.2	587.99 +		957.64 •
AUG 31 '71 FT	13,666	1,930.0	369.65 +		1,536.43 •
DEC 2 '71 FT	14,139	3,238.5	578.79 +		1,873.91 •
DEC 3 '71 FT	14,162	1,762.2	337.48 +		1,877.49 •
DEC 11 '71 FT	14,243	20.5	3.58 +		2,414.49 •
DEC 11 '71 FT	14,244	3,041.0	537.00 +		2,951.49 •
DEC 31 '71 FT	14,491	3,000.1	537.00 +		3,524.29 •
JAN 7 '72 FT	14,631	3,200.1	572.80 +		3,708.87 •
JAN 7 '72 FT	14,631-A	1,020.1	184.58 +		4,287.04 •
JAN 13 '72 FT	14,673	3,230.3	578.17 +		4,860.56 •
JAN 25 '72 FT	14,921	3,204.3	573.52 +		5,436.94 •
JAN 26 '72 FT	14,929	3,220.2	576.38 +		5,644.22 •
JAN 27 '72 FT	14,957	1,158.3	207.28 +		

YOUR CHECK IS YOUR RECEIPT.

PAY LAST AMOUNT IN THIS COLUMN

CODE
CS - CLEANING OR SERVICE
RT - REPAIR
FT - FUEL
EC - ERROR CORRECTION

Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

Rec'd 6-2-72

318 (30)

PAGE 2

STATEMENT

Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 112..

PHONE { 636-1050 / 636-1051

COMPLETE BOILER & BURNER INSTALLATION

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

Re: Grace Towers

$ _____ AMOUNT ENCLOSED

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$5,644.22
FEB 9 '72 FT	15,195	1,666.7	298.39 +		5,9[illegible].61 •
FEB 9 '72 FT	15,205	1,427.1	255.43 +		6,198.04 •
FEB 10 '72 FT	15,218	3,23[illegible].0	578.17 +		6,776.21 •
FEB 14 '72 FT	15,243	2,074.5	371.[illegible] +		7,147.64 •
MAR 1 '72 FT	15,607	2,965.2	530.74 +		7,678.38 •
MAR 1 '72 FT	15,608	3,200.1	572.80 +		8,251.18 •
MAR 1 '72 FT	15,609	2,512.5	449.65 +		8,700.83 •
MAR 16 '72 FT	15,916	3,205.0	573.70 +		9,274.53 •
MAR 24 '72 FT	16,033	1,561.3	279.42 +		9,553.95 •
MAR 28 '72 FT	16,105	3[illegible].5	577.28 +		10,131.23 •
MAR 28 '72 FT	16,110	2,675.0	478.83 +		10,610.06 •
MAR 29 '72 FT	16,125	3,174.0	568.15 +		11,178.21 •
APR 12 '72 FT	16,364	3,239.1	579.78 +		11,757.99 •

CODE
CS - CLEANING OR SERVICE
RT - REPAIR
FT - FUEL
EC - ERROR CORRECTION

YOUR CHECK IS YOUR RECEIPT.

Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

PAY LAST AMOUNT IN THIS COLUMN

PHONE 636-1050
636-1051

ST CLIENT

Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

COMPLETE BOILER & BURNER INSTALLATION

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

Re: Grace Towers

$ AMOUNT ENCLOSED

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$11,757.99
APR 13'72 FT	16,365	1,429.1	255.79		12,013.78
APR 13'72 FT	16,365-A	3,213.1	575.13		12,588.91
APR 26'72 FT	16,487	2,967.4	531.09		13,120.00
MAY 12'72 FT	16,631	3,214.0	575.31		13,695.31
JUN 5'72 FT	16,774	2,308.1	413.13		14,108.44
SEP 22'72 FT	17,265	2,500.1	447.50		14,555.94
OCT 3'72 FT	17,296	3,004.5	537.71		15,093.65
OCT 4'72 FT	17,332	2,800.4	501.20		15,594.85
OCT 28'72 FT	17,529	2,700.5	483.30		16,078.15
OCT 30'72 FT	17,675	2,418.0	432.82		16,510.97
NOV 1'72 FT	17,719	2,212.0	395.95		16,906.92
NOV 7'72 FT	17,827	2,492.3	446.07		17,352.99
NOV 16'72 FT	18,025	4,431.1	793.15		18,146.14

YOUR CHECK IS YOUR RECEIPT.

PAY LAST AMOUNT IN THIS COLUMN

CODE
CS - CLEANING OR SERVICE
RT - REPAIR
FT - FUEL
EC - ERROR CORRECTION

Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

320 (32)

PAGE 4

ST ○ ENT

Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION

PHONE 636-1050
636-1051

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

Re: Grace Towers

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

$ AMOUNT ENCLOSED

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$18,146.14
NOV 21'72 FT	18,086	3,401.2	608.78		18,754.92
DEC 2'72 FT	18,383	4,423.3	791.72		19,546.64
DEC 2'72 FT	18,384	4,021.0	719.76		20,266.40
DEC 2'72 FT	18,458	1,633.3	292.31		20,558.71
DEC 13'72 FT	18,534	2,829.0	506.39		21,065.10
DEC 15'72 FT	18,635	1,500.3	268.50		21,333.60
DEC 22'72 FT	18,734	2,070.0	370.53	Gratis 12/23/72	21,704.13
DEC 26'72 FT	18,818	1,000.5	179.00		21,883.13
DEC 29'72 FT	18,959	3,627.3	649.23		22,532.36
JAN 3'73 FT	19,069	4,437.6	794.40		23,326.76
JAN 3'73 FT	19,065	4,383.2	784.56		24,111.32
JAN 11'73 FT	19,328	3,092.1	553.47		24,664.79
JAN 11'73 FT	19,318	2,630.3	470.77		25,135.56

PAY LAST AMOUNT IN THIS COLUMN

CODE
CS - CLEANING OR SERVICE
RT - REPAIR
FT - FUEL
EC - ERROR CORRECTION

YOUR CHECK IS YOUR RECEIPT.

Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

...uard Oil & Service Inc.
1235 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION
PHONE 636-1050
636-1051

...VENT

Grace Housing Development
225 New Jersey Avenue
Brooklyn, New York

Re: Grace Towers

$ AMOUNT ENCLOSED

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$25,135.56
JAN 30 '73 FT	19,794	4,411.5	789.75		25,925.31 •
JAN 31 '73 FT	19,789	4,416.1	790.48		26,715.79 •
JAN 21 '73 FT	19,603	2,964.2	530.59		27,246.38 •
FEB 5 '73 FT	19,950	3,431.8	614.33		27,860.71 •
FEB 13 '73 FT	20,206	4,425.9	792.25		28,652.96 •
FEB 23 '73 FT	20,472	2,749.5	519.75		29,172.71 •
FEB 25 '73 FT	20,275	4,407.2	832.96		30,005.67 •
MAR 6 '73 FT	20,711	4,426.8	836.70		30,842.37 •
MAR 8 '73 FT	20,748	4,420.5	835.56		31,677.93 •
MAR 24 '73 FT	20,988	1,500.2	283.53		31,961.46 •
MAR 24 '73 FT	21,098	2,950.3	557.60		32,519.06 •
MAR 29 '73 FT	21,066	4,385.7	828.90		33,347.96 •
MAR 29 '73 FT	21,110	1,570.4	296.81		33,644.77 •

PAY LAST AMOUNT IN THIS COLUMN

CODE
CS - CLEANING OR SERVICE
RT - REPAIR
FT - FUEL
EC - ERROR CORRECTION

YOUR CHECK IS YOUR RECEIPT.

Vanguard Oil & Service, Inc.
1235 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

322 134

STATEMENT

Vanguard Oil & Service Inc.

1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION

PAGE 6

PHONE { 636-1050 / 636-1051

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

Re: grace Towers

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

$ AMOUNT ENCLOSED

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$33,644.77
APR 10 73 FT	21,315	2,250.0	425.25		34,070.02 •
APR 14 73 FT	21,314	3,200.2	604.84		34,674.86 •
APR 19 73 FT	21,316	3,229.8	610.43		35,285.29 •
APR 19 73 FT	21,489	3,200.2	604.84		35,850.13 •
MAY 2 73 FT	21,631	3,556.9	672.25		36,562.38 •
MAY 15 73 FT	21,747	2,472.9	467.38		37,029.76 •
JUN 19 73 FT	21,930	4,440.4	839.35		37,869.11 •
AUG 27 73 FT	22,311	4,000.4	756.19		38,625.30 •
SEP 5 73 FT	22,354	3,311.2	625.82		39,251.12 •
OCT 27 73 FT	22,838-A	3,000.0	567.00		39,818.12 •
NOV 1 73 FT	22,947	4,514.4	943.64		40,761.76 •
NOV 8 73 FT	23,069	1,000.0	249.00		41,010.76 •
NOV 15 73 FT	23,206-A	800.4	215.31		41,226.07 •

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1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

323 135

STATEMENT

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Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION

PHONE 636-1050
636-1051

Grace Housing Development
223 New jersey Avenue
Brooklyn, New York

Re: Grace Towers

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

$ AMOUNT ENCLOSED

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$41,226.07
NOV 20 '73 FT	23,255	3,950.0	1,062.55 +		42,288.62
NOV 24 '73 FT	23,330	3,002.2	807.59 +		43,096.21
NOV 27 '73 FT	23,226	4,388.1	1,180.40 +		44,276.61
DEC 10 '73 FT	23,827	4,415.3	1,324.59 + Call 1253		45,601.20
DEC 14 '73 FT	24,01[illegible]	1,030.2	309.06 +		45,910.26
DEC 20 '73 FT	24,034	4,476.0	1,342.80 +		47,253.06
DEC 20 '73 FT	24,125	3,496.0	1,048.80 +		48,301.86
DEC 31 '73 FT	24,267	4,000.0	1,200.00 +		49,501.86
JAN 3 '74 FT	24,591	766.9	283.79 +		49,785.65
JAN 9 '74 FT	24,729	1,739.0	643.43 +		50,429.08
JAN 12 '74 FT	24,844	1,606.9	594.59 +		51,023.67
JAN 18 '74 FT	24,999	1,365.9	505.42 +		51,529.09
JAN 18 '74 FT	25,024	3,263.3	1,207.68 +		52,736.77

PAY LAST AMOUNT IN THIS COLUMN

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Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

313 (25)

STATEMENT

Vanguard Oil & Service Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216
COMPLETE BOILER & BURNER INSTALLATION

PAGE 8
PHONE 636-1050
636-1051

Grace Housing Development
223 New Jersey Avenue
Brooklyn, New York

Re: Grace Towers

$ AMOUNT ENCLOSED

TO INSURE PROPER CREDIT PLEASE DETACH AND RETURN WITH REMITTANCE

DATE	TICKET NO.	GALLONS	CHARGES	CREDITS	BALANCE
BALANCE BROUGHT FORWARD FROM LAST MONTHS STATEMENT					$52,736.77
JAN 25'74 FT	25,246	4,456.4	1,649.09 +		54,385.86 •
JAN 29'74 FT	25,346	2,302.9	852.11 +		55,237.97 •
FEB 2'74 FT	25,589	2,851.5	1,055.24 +		56,293.21 •
FEB 5'74 FT	25,610	1,001.1	360.72 +	Clear 33101	56,653.93 •
FEB 11'74 FT	25,946	1,928.8	713.73 +		57,367.66 •
FEB 14'74 FT	25,829	4,451.3	1,647.24 +	Voided	59,014.90 •
FEB 21'74 FT	26,281	951.1	352.24 +		59,367.14 •
FEB 22'74 FT	26,314	4,668.4	1,727.53 +		61,094.67 •
MAR 2'74 FT	26,599	1,754.2	649.05 +		61,743.72 •

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Vanguard Oil & Service, Inc.
1255 ATLANTIC AVENUE
BROOKLYN, N. Y. 11216

PAY LAST AMOUNT IN THIS COLUMN

325 (37)

SCHEDULE OF YOUR CURRENT INSURANCE

SOL M. KATZ CO.
INSURANCE
110 JOHN STREET NEW YORK, N. Y. 10038
PHONE: 233-1900

PREPARED FOR
Grace Housing Development Fund Etal.
c/o Reverend Jacob N. Underwood
222 New Jersey Avenue
Brooklyn, New York

PROPERTY LOCATION: (IF DIFFERENT FROM ABOVE) 2054-76 Pitkin Avenue, 3042 Pitkin Avenue and 351-383 Belmont Ave,b/a 238-282 Pennsylvania Ave,Bklyn,N.Y. DATE PREPARED: 1/28/74

COVERAGE	AMOUNT OR LIMITS	TERM IN YEARS	EXPIRES	COMPANY	POLICY NUMBER	PREMIUM	COMMENTS
Special Multi-Peril Fire Buildings Blanket $ 1,000 Deductible	$ 4,400,000	3	5/13/76	Comm Union	W02 2694	$15,000	Annually
Liability	$ 250/1000,000.						
Property Damage	$ 50,000						
Elevator Collision	$ 5,000						
Open Stock Burglary $ 100 Deductible	$ 2,000						
Compensation		1	5/13/74	" "	G 203725	$ 518.00	
Boiler & Machinery	$ 250,000	3	12/22/75	" "	EY 0637-83	$ 432.00	÷3 = 144
Disability Benefits			4/23/73	" "	DBL 16797		Until Cancelled
Fidelity Bond (Robert G. Buckner)	$ 35,000	1	7/5/74	" "	EY-70007-44	$ 263.00	
						15925	

We present this schedule so you may get an overall picture of your insurance protection. If you have policies from other insurance offices we suggest you add them to this list to present the complete picture.

Please examine this schedule with particular reference to the amount or limits of your insurance. Today's property values and liability judgments are higher and insurance should be adjusted to cover.

We will be glad to discuss this schedule with you at your convenience.

Rec'd 4-2-74

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327 EXHIBIT 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
GRACE TOWERS TENANTS
ASSOCIATION, et al.,

Plaintiffs,

vs.

GRACE HOUSING DEVELOPMENT FUND
CO., INC.,

Defendants.

----------X

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

STANLEY G. BERGER, ESQ., being duly sworn, deposes and says:

1. I am a partner in the firm of Hoffberg, Oberfest and Burger, certified Public Accountants with offices at 888 Seventh Avenue, New York, N.Y. 10019 and make this affidavit in support of an action brought by Grace Towers Tenants Association, et al., against Grace Housing Development Fund Co., Inc. et al.

2. Our firm has had extensive accounting and auditing experience with federally subsidized housing throughout the Northeastern United States including several projects aided under § 221(d)(3) of the National Housing Act.

3. We understand that Grace Housing Development Fund Co., Inc. is the owner of a 168-Unit § 221(d)(3) subsidized project at 272 Pennsylvania Avenue and 2060 Pitkin Avenue, Brooklyn, N.Y.

4. The Association has retained our firm to analyze materials (see Exhibit 6 to complaint) submitted by the owner, Grace Housing, in support of its application to HUD for a 23% rent increase, and to issue a statement of our professional opinion regarding the validity of the rent increase.

5. It is the opinion of Hoffberg, Oberfest and Burger that the owner application material received from HUD by the Association and received by this firm is insufficient to make a judgment as to the validity of any increase.

6. Among the items needed for a proper determination that are missing from the material given by HUD to the Associatong are:

a. Copy of the management agreement between HUD, the owner and the management firm.

b. Detailed summary of payroll information.

c. Originals of oil, electric and gas bills.

d. Copy of the cost of construction certification given HUD by the owner.

7. Annual certified financial statements submitted by the owner to HUD for every year since the inception of the project are also needed.

Sworn to before me this
11th day of October, 1974.

NOTARY PUBLIC

ROBERT SILAGI
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-3664310
Qualified in Queens County
Commission Expires March 30, 1975